

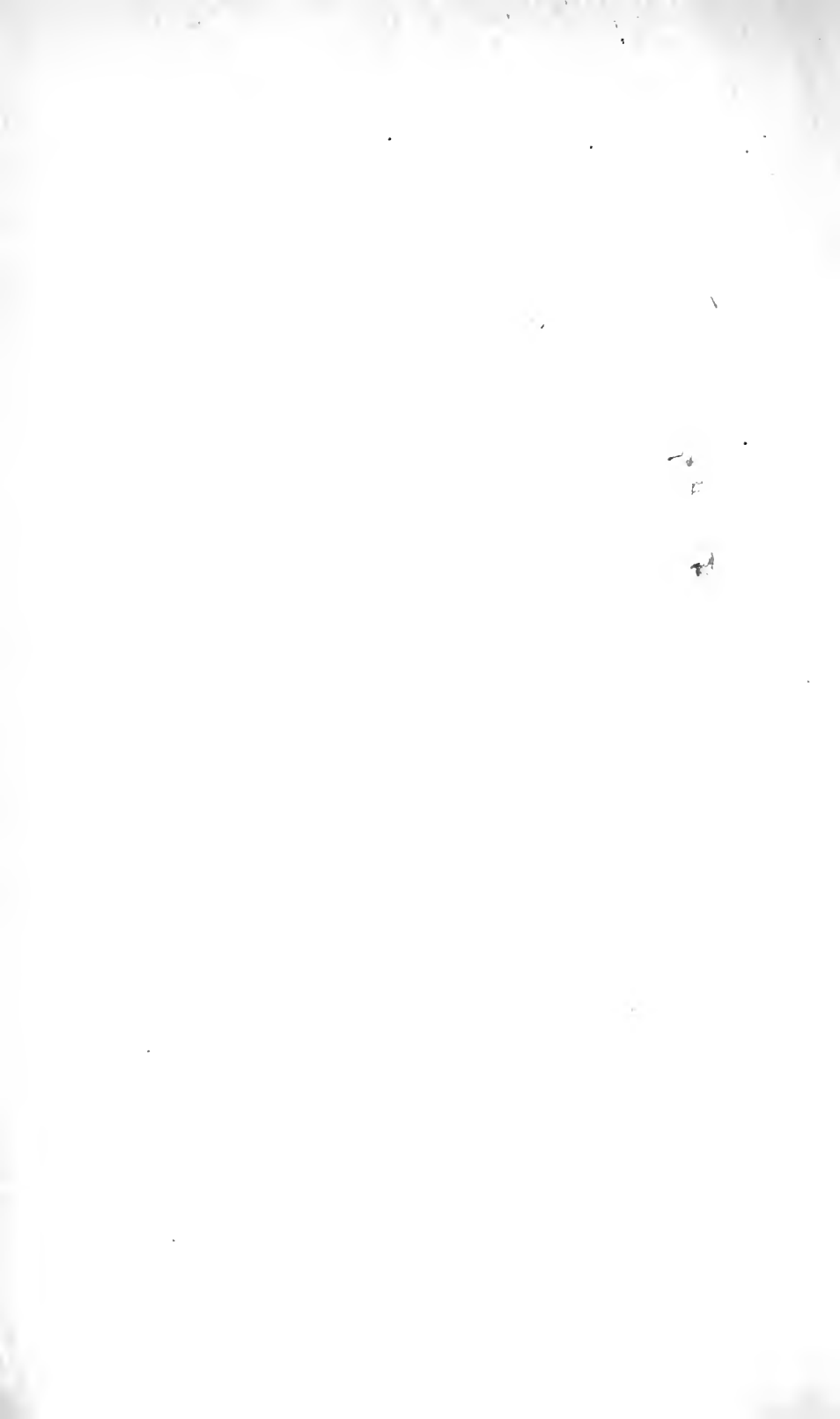


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## INTRODUCTION

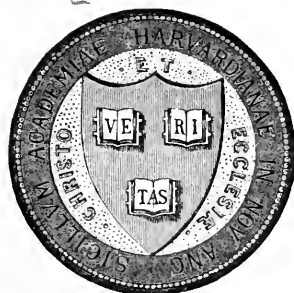
*TO THE STUDY OF*

# FEDERAL GOVERNMENT

BY

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BOSTON, U.S.A.

PUBLISHED BY GINN & COMPANY

1891

1956  
24 11/93

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SECOND EDITION.

PRESSWORK BY JOHN WILSON AND SON,  
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TO

**Henry Warren Torrey**

Who during forty years has taught his students to seek  
and love the truth in history  
this book  
is gratefully dedicated

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## PREFACE.

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ONE of the most striking political tendencies of the last century has been the development of federal government both in Europe and America. Within a hundred years the Swiss confederation has grown compact and strong, the German confederation has been remodelled, and tendencies toward an Imperial federal system are seen in England. On this side of the Atlantic, the Spanish American States have formed several confederations, of which two—Mexico and the Argentine Republic—seem durable; and the British continental possessions have been amalgamated into an union. Above all, the United States of America has borne the strain of growth of territory and population, and is to-day the strongest and most firmly established of all federal governments that have ever existed.

To the student of American history and politics the study of federal government is therefore a study of the principles underlying his own institutions. The older forms of federation, previous to 1789, are instructive, because of the influence which they had upon the formation of the Constitution of the United States: in turn, the workings of that Constitution have affected the formation of later federal governments; and the comparison of the most successful existing systems with the United States furnish many points of helpful criticism.

This monograph is intended in two ways to aid to a knowledge of federal government. The first or historical portion is an outline of the political history of the successive federations, with some account of the literature upon each. The second or comparative part is presented in the appendix containing a parallel

view of the four leading federal constitutions now in operation. Each of the constitutions is meant to serve as a practical commentary upon the others. In the limits of this monograph more extended comment is impossible.

I desire to express my obligation to Prof. John H. Wright and Prof. E. Emerton of Harvard College for their helpful emendations in the copy for Chapters II. and III. respectively; to Dr. Charles Gross, of Harvard, for information in regard to the Scotch federated cities and for careful revision of the proofs.

Upon the proofs of the bibliographical notes and appendix I have had the valued criticism of the following gentlemen, to whom I beg to make grateful acknowledgment. On the Greek federations, Prof. John H. Wright, and also Prof. J. R. Wheeler of the University of Vermont; on mediæval federations, Prof. E. Emerton and Dr. Gross; on Germany, Prof. F. J. Goodnow of Columbia; on Switzerland, Dr. J. M. Vincent of Johns Hopkins; on Canada, Mr. Martin J. Griffin, librarian of the library of Parliament, Ottawa; on the Argentine Republic, Señor Vicente G. Quesada, Minister of the Argentine Republic in Washington; on Brazil, Senhor Valente of the Brazilian legation. Mr. W. G. Brown of the senior class has kindly verified the bibliographical references.

It is hoped that the cross references in Appendix A, and the Key in Appendix B will make up for any defects of classification in comparing the four Constitutions.

This monograph is intended to be a preliminary to a more elaborate work on federal government, in which I hope more fully to study the development of federal ideas, and to compare the actual workings of existing federations. I shall therefore be especially grateful for any corrections.

ALBERT BUSHNELL HART.

CAMBRIDGE, NOV. 1, 1890.

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## CHAPTER I.

### THE THEORY OF FEDERAL GOVERNMENT.

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§ 1. **The doctrine of sovereignty.**<sup>1</sup>—The theory of federal government is that by dividing the functions of government between two political organizations, a national state and a group of associated local states, the whole process of governing may better be carried on. It is, therefore, apparently in contradiction to the usually received doctrine of sovereignty, viz., that in every politi-

<sup>1</sup> **The doctrine of sovereignty.** A bibliography and comparison of views may be found in the notes to *Jellinek, Lehre von den Staatenverbindungen*, 6-7.—There is an exhaustive treatment of the subject in *John Austin, Jurisprudence* (1869, and later editions); *Bliss, Of Sovereignty* (1885).—Treatises on international law contain discussions. See *Calvo, Droit International*, §§ 41-103; *Wheaton*, Part I, c. ii, §§ 5-12; *Twiss*, §§ 12-23; *Heffter*, § 22; *Bluntschli* in *Lalor's Cyclopædia*, III, 763-767.—Of American commentators consult *Wharton, Commentaries*, § 374; *Pomeroy, Constitutional Law*, §§ 7-9; *Story, Commentaries*, §§ 207, 208; *Bateman, Political and Constitutional Law*, §§ 69-77; *Cooley, Constitutional Limitations*, I, 2.—There is a brief and clear discussion in *Crane and Moses, Politics*, 33-46.—Writers on German and Swiss constitutional law have full discussions, as *Schulze, Lehrbuch*, §§ 15-17; *post* §§ 41-47. A discriminating brief treatment will be found in *Jellinek*, 16-36.—The treatises on the United States, and especially on the Confederate States, contain elaborate discussions of state and national sovereignty. See *post* §§ 33, 39, 40, especially *Stephens, Jefferson Davis*, and *Republic of Republics*.

cal community there not only should be, but must be, in the final analysis one and only one power capable of carrying on government.

The contradiction arises from a confusion between the body from which decrees proceed and the body which selects the immediate decreeing power and may limit its action. The sovereign is that person or body of persons which, in the last resort, may, while observing legal forms, impose its will upon all other persons or bodies in the state. It has, therefore, supreme and unlimited power to do anything that may be done by a political organization; it may change any law or institution which stands in its way. In countries without a written constitution, it may change all pre-existing laws by a simple act; the ukase of a Czar or an act of Parliament is complete in itself. Where a written constitution obtains, it limits the exercise of sovereignty, and is therefore itself the highest expression of the sovereign will: the body legally possessed of the power of altering the constitution is in all countries the sovereign. Within a federal government, as within other forms, there must reside somewhere an unlimited authority, or group of unlimited authorities. Since two authorities cannot be supreme over the same object, either the constitution-making authority in the states is final for each, or the constitution-making authority of the union is final for all.<sup>1</sup>

§ 2. **Non-federal combinations of states.**<sup>2</sup>—Wherever we have a political community in which there is discernible a supreme will, acting upon the whole, we have a state; wherever the will is final only for a part of the community, we have a combination of states. All governments are founded upon the principle of association, and the units are usually complex. Even in primitive races the governing authority rarely acts upon individuals alone; the existence of groups is pre-supposed, — families, gentes, or communities, having imprescriptible rights. The extension of the principle to combinations of states is more difficult: fractions of a state can be dealt with by the sovereign power of the state as a whole; states cannot be submitted to like regulations by any combination of themselves, without losing their sovereignty. Nevertheless, from the beginning of history there have been political communities so connected with other political communities that they have

<sup>1</sup> See *post* § 6.

<sup>2</sup> **Non-federal combinations of states.** This subject is usually taken up in discussions of the theory of federal government. See *post* § 466; for details see *post* §§ 3-5.

not led an independent existence. The closeness of association varies all the way from a friendly alliance, like that of Athens and Thebes, to the most concentrated federal unions, like the government of Mexico.

It is, however, not difficult to separate and to classify those combinations which have no federal organization and are based on no federal principle: there are what might be termed satellite combinations, in which one state is paramount over the others; there are combinations through hereditary monarchies; there are alliances and leagues. These three classes shade into each other; and the leagues are hard to distinguish from the lesser forms of federation.

§ 3. **Dependent states.**—In the subordinate or satellite combinations, a so-called state or a group of states is partially subject to a superior state, and has not complete sovereignty. The relation takes various forms.<sup>1</sup> There are “protectorates,” like that of Italy over the Republic of San Marino. Sometimes the superior state “administers” the weaker one; this is the case with Austria and Bosnia. More frequently the subordinate state has a separate organization, but pays tribute; this was a familiar relation in ancient times, and is illustrated to-day in the Ottoman Empire, “the classical home as well of composite as of vassal states.” In Europe the relation has taken the form of feudalism, with its complexus of dependent communities, many of them having subsidiary communities under them.

The tendency of modern times has been to simplify and to centralize these complicated systems; but in the so-called “dependencies”<sup>2</sup> of the great modern states we have the same principle. The Roman provinces, especially the more distant, were subjected to special burdens and restrictions. For centuries the Isle of Man was not an integral part of the English kingdom. Two of the

<sup>1</sup> **States under protection and administration.** Besides the general discussions, *post* § 463, see *Calvo*, §§ 42, 43, 61-68, 71-75, and references; *Heffter*, §§ 19-22; *Wheaton*, Part I, c. ii, §§ 13, 14, and references; *Twiss*, §§ 24-41; *Phillimore*, §§ 77-101; *Jellinek*, 113-116.—The usual examples are Monaco, San Marino, the Indian Native States, Kniphausen, Cracow, the dependencies of Turkey, states with guaranteed neutrality, like Switzerland, Belgium, and the Congo Free State.

<sup>2</sup> **Dependencies.** The question of subordinate membership of states is taken up in *Calvo*, § 40, and references; *Jellinek*, 63-68; *Heffter*, § 20; *Woolsey*, *Political Science*, II, 146-159; *Freeman*, *Federal Government*, 23-30; *Fiske*, *American Political Ideas*, 73-85.—India, Tunis, and Herzegovina are examples.

principal federations of early modern history, Switzerland and the United Provinces, had within their borders dependent communities not entitled to a share in the federal government. Alsace-Lorraine is at the present moment a dependency of the German Empire, and India is an empire dependent upon another empire.

The most important dependencies of the present day are the colonies.<sup>1</sup> From the first Phœnician settlements to the most recent conquests in Africa, the theory of colonial government has been that the policy and often the local government of the colonies was to be determined by the home government. The successful revolution of the thirteen British colonies, in 1775–1783, has taught the necessity of moderation; in some countries, as in France, the colonists have representation in the general parliament. There is now a decided tendency toward a grouping of colonies into confederations; and Canada, itself a colony, is also a well-organized fédéral state, with dependent territories of its own. Even the territories of the United States are in effect colonies.

Out of the planting of colonies has grown another peculiar relation of dependency. Savage tribes<sup>2</sup> have often been so well organized that it has been politic to treat them as nations. The United States has adopted this policy toward the Indians, with embarrassing results; the Supreme Court has held that Indians are “domestic dependent nations,” capable of acceding to treaties which bind the United States. Other countries have avoided the difficulty by dealing with the savages as organized communities of occupants, subject in government to the general authority.

§ 4. **Conjunctive unions.**<sup>3</sup>—The principle of hereditary mon-

<sup>1</sup> **Colonies.** The legal relation of colonies to the mother country is discussed in *Jellinek*, 64–68; *Woolsey*, II, 159–163; in the literature of Imperial federation, *post* § 55; *A. Todd, Parliamentary Government in the British Colonies* (1880); *Cotton and Payne, Colonies and Dependencies* (1883); *Trendell, Her Majesty's Colonies* (1886).

<sup>2</sup> **Dependent savage tribes.** This question has been most important in the United States, and is considered in most of the constitutional treatises. See *Wheaton*, Part I, c. ii, § 14; *Lawrence's Wheaton*, note 28; references to *Desty, Constitution*, 65, 78–81, 299; *Calvo*, § 69; *Jellinek*, 152–154.

<sup>3</sup> **Conjunctive unions.** There is a monograph on this subject: *Juraschek, Personal- und Realunion* (1878). The literature may be gathered from foot-notes of works on international law: see *Twiss*, §§ 37–40; *Klüber*, I, §§ 27–28; *Calvo*, §§ 45–48, and references; *Heffter*, § 53; *Phillimore*, §§ 74–76; *Wheaton*, Part I, c. ii, §§ 16–19; *Dana's Wheaton*, note 27; *Lawrence's Wheaton*, note 30; *Jellinek*, 68–88, 197–253; *Freeman, Federal Government*, 98–100; *Schulze, Lehrbuch*, § 25. The best examples are Norway and Sweden, Austria and Hungary, Great Britain.

archy has given rise to a form of combination arising out of the fact that two independent states may, by the laws of inheritance, have the same sovereign. The simplest form is the "personal union," in which the constitution of neither state is affected by the existence of the other. The empire of Charles V is an example; the relation between England and Hanover in 1837 was of this kind. Another form, to which German publicists give the name "realunion," somewhat approaches a federal government; under it two or more states, having the same sovereign, agree upon a constitutional *modus vivendi* for specified common purposes. The union between Sweden and Norway is of this kind; but the most striking case is that of the dual government of Austro-Hungary, in which two countries, each a complexus of semi-independent states, unite for foreign and financial affairs. A third form upon which some writers insist is the "incorporate union," in which two states are united integrally, yet each retains its system of law and its privileges. The usual example, Russia and Poland, shows that the incorporate union is not a union at all.

§ 5. **Associations of states.**<sup>1</sup>—No state exists without coming into contact with neighboring states. The principle in early Roman law, as among primitive nations to-day, is that every stranger is a public enemy. The growth of commerce and the growth of a humane spirit have brought about the acceptance of the opposite principle—that the normal relation between nations is one of peace and friendship. This consensus of civilized opinion is expressed in the name Family of Nations, which is a kind of universal informal union.

As a part of the general agreement to live peaceably, there have grown up recognized principles as to the relations between nations, to which the term international law is applied; and more intimate associations have been formed. The simplest is a treaty between two or more powers. Such an agreement unites the contracting parties only in the matters specified;<sup>2</sup> and each power retains the right to judge for itself how far the treaty has been observed by the other parties, and to declare itself absolved if the treaty is in any respect not observed by the other party.

<sup>1</sup> **Associations of states.** The general subject of alliances and treaties lies within the domain of international law. See also *Jellinek*, 36-60, 91-113, 121-126, 158-172, especially 58-60.

<sup>2</sup> On the question of whether a federal union is founded on treaty, see *post* § 7.

In the alliance we see a closer association of states, though still something less than a federal union. The parties may be several; the objects are of a broader, often of a political, nature. The history of the world has shown that alliances are of short duration, unless expanded into federations. Athens was in alliance successively with and against most of her neighbors. England was allied with Russia against France in 1812, and with France against Russia in 1856.

The term "league" is applied to an alliance of rather more general and enduring character; and some of the stronger leagues have been practically federal governments. A league has several members and a very definite commercial or political purpose. The middle ages abounded in commercial leagues, among which one, the Hanse,<sup>1</sup> was a great political power. The Zollverein,<sup>2</sup> founded in 1834, is an example of a commercial league which laid the foundation for a political union. The present international postal, telegraph, and railway unions are too limited in purpose to constitute true leagues. Political leagues differ from alliances in the fact that the number of adherents is usually larger and that the purposes are more general; they differ from a confederation in that they have no permanent central organization, and in that any member may withdraw at will. The Lombard League<sup>3</sup> is an example; and the present "triple alliance" between Germany, Austro-Hungary, and Italy is a striking modern instance.

The so-called balance of powers<sup>4</sup> in Europe is another form of indefinite union. Without any agreement to that effect, it is nevertheless understood that if any one of the six great powers, England, France, Germany, Austro-Hungary, Russia, Italy, attempts to aggrandize itself unduly, a combination of powers, some of which might not be directly affected, will be formed to check the movement. On the other hand, should Europe ever suffer another invasion from the East, the six powers would combine to resist it.

§ 6. **Nature of federal government.**<sup>5</sup> — If the different kinds of

<sup>1</sup> See *post* § 27.

<sup>2</sup> See *post* § 50.

<sup>3</sup> See *post* § 34.

<sup>4</sup> **European system of balance of powers.** Lawrence, *The Primacy of the Great Powers*, in his *Essays*, No. v; Hülschner in *Zeitschrift für volkth. Recht*, I, 59 (1844); Bluntschli, *Völkerrecht*, §§ 95-114; Lorimer, *Institutes*, II, Book v, c. iii; Heffter, § 6.

<sup>5</sup> **Nature of federal government.** For general discussions see *post* § 467. The references to Jellinek, 13, and to Calvo, § 49, are a brief bibliography. For brief discussions see Geffcken's note to Heffter, § 20; Jellinek, 3-16, 315-316; Dubs, *Öffentliches Recht*, II, 1-7; von Gerber, *Grundzüge*, p. 24 and Beilage iv; Tucker's *Blackstone*, I, 71-75.



non-federal unions glide imperceptibly into each other, it is even more difficult to define federal government, and clearly to separate it from looser forms of union. Some of the characteristics which were laid down by writers a few years ago as indispensable, prove lacking in new governments, which are yet undoubtedly federal. Thus it has been held that in a true federation there could be no preponderant state; but Germany is a true federation, and Prussia is preponderant. It has been held that a federation must be built up from previously independent states; but Mexico and Brazil are formerly centralized states, now sub-divided. Certain characteristics are, however, always to be found in a federal government. The aim of a federation is to gain the advantages of the concentrated power of great states, while retaining the advantages of local interest found in small states. Accordingly, there is always created some central, permanent authority, having powers applying throughout the federation. That authority must, in part, be representative. On the other hand, the separate states are continued, not as administrative districts, but as units of government, protected by the constitution from federal interference in local matters. In order to make possible the dual government, there must be an elaborate division of functions between the general government and the states, either expressed or sanctioned by custom; and each must be secure in the exercise of their functions. Furthermore, the union must be established as a permanent government, not terminable at the will of any state or group of states, except by the forms of constitutional amendment.

§ 7. **The treaty theory.** — Since most federations have been formed by the voluntary union of previously separate communities, and since the line between federations and alliances is difficult to draw, it has been asserted by many writers that federations are based upon treaty, and are in fact only perfected alliances. The importance of the theory lies in its apparent recognition of the right of a member to withdraw from a union as it could withdraw from a treaty, which, in its opinion, has not been observed by the other party. This is the basis of the celebrated "Compact" theory of the Constitution of the United States, enounced in the Virginia and Kentucky Resolutions of 1798, and in the Report of the Hartford Convention of 1814; and elaborated first by Hayne and afterwards by Calhoun, in their debates with Webster, 1830-33. It is this doctrine, also, which gives whatever there may be of legal

ground for the theory of secession, put forward, in Switzerland in 1847, in the United States in 1860-61.

While it is true that many federations have been formed by diplomatic negotiation and agreements between the powers concerned, — as was the case in the German Confederation of 1815 and the German Empire of 1870 — it is equally true that the unions thus formed have been very different from alliances. In the first place, the agreement creates a new organism, different from that of any of the states. In the second place, there is usually some tribunal framed for settling controversies between states, and between the union and individual states. In the third place, either expressly or by custom, power is given the union to restrain states from withdrawal or from a breach of constitutional obligation. Finally, whether logically or illogically, the union and the states both exercise sovereign power over individuals. If federations are founded on treaty, it is a treaty of a peculiar and indissoluble character, by which the contracting parties bind themselves not to exercise the usual rights of treaty-making powers.

§ 8. **The constitution theory.** — Opposed to the treaty theory of federal government is the theory that is based, like simple governments, on the acceptance of a fundamental constitution. When once a federal constitution is framed, there is no visible distinction between its force and that of the constitution of one of the states. Each has its organs, its system of enforcement, and its method of amendment. Federal constitutions are entirely within the domain of public law, and have little trace of international law in their operations. The legislatures of many federations have been congresses of ambassadors, acting under instructions; but when a resolution has been taken, within the legal forms and in exercise of the legal powers of that confederation, it has legally bound all the members. This obligation was recognized even in so feeble a federation as the German Confederation of 1815. Perhaps the most striking support of the constitution theory is the power of amendment without unanimous consent which resides in most modern federal governments. Under the national constitution exist all state constitutions; whether it is so expressed or not, they include the national constitution in their provisions, and nothing in them can be valid if not in accordance with the national constitution. The authority for both the state and the national constitutions is in the body, or combination of bodies, having the

power to alter the fundamental instrument or conventions of government, and thus through legal forms to impose its will to any extent.

Both treaty and constitution theory may be so applied, as to avoid the logical difficulty of the conception of double sovereignty; under an extreme statement of the treaty theory, sovereignty continues to reside in the states, its exercise being committed for certain purposes to the union; under the constitution theory it may be said that the sovereignty resides in the body having power to amend the federal constitution and with it any state constitution; but that the sovereign chooses to divide the exercise of its powers between two sets of instruments, neither of which can legally perform the functions of the other. *L*

§ 9. **Classification of federal governments.**<sup>1</sup>—To the classification of federal governments publicists have given great attention with unsatisfactory results. History shows a great variety of forms, ranging from the lowest possible organization, like that of the Amphictyonic Council to the highly centralized and powerful German Empire. Many writers deny that any fixed boundaries can be described. The usual classification is, however, into three divisions,—the *Staatensstaat*, or state founded on states; the *Staatenbund*, or union of states—to which the term Confederacy nearly corresponds; and the *Bundesstaat*, or united state, which answers substantially to the term federation as usually employed.

§ 10. **The *Staatensstaat*.**<sup>2</sup>—The *Staatensstaat* is defined to be a state in which the units are not individuals, but states, and which, therefore, has no operation directly on individuals, but deals with and legislates for its corporate members; they preserve undisturbed their powers of government over their own subjects. The usual example of a *Staatensstaat* is the Holy Roman Empire.

This conception has been ably supported as the theory of the government of the United States in the book called "Republic of Republics." It is, however, illogical in theory, and never has been

<sup>1</sup> **Classification of federal governments.** See *post* § 465; *Calvo*, §§ 50, 54, and references; *Wheaton*, Part I, c. ii, §§ 20-22; *Fellinek*, v-viii, 58-60, 277-278; *Phillimore*, §§ 102-103; *Bernard*, *Lectures on the American War*, 68-72; *Twiss*, §§ 37, 54; *Heffler*, § 20; *Schulze*, *Lehrbuch*, §§ 23-25; *Woolsey*, *Political Science*, II, 147-148, 166-170; *Wharton*, *Commentaries*, § 137.

<sup>2</sup> ***Staatensstaat*.** General references, *post* § 466; *Fellinek*, 137-157, 277-278; *Schulze*, *Lehrbuch*, § 65.

carried out in practice. The analogy fails between individuals as members of a state and states as members of a union; for individuals in a society cannot exercise exclusive powers, and it is in the nature of states to perform acts of sovereignty. Nor is it possible for any government to abstract itself from relations with individuals. A Staatenstaat must have an organization of some kind, and that organization must be committed to individuals, who must be held liable for the performance of their duties. While the states preserve their independence, the union is nothing but an alliance: the moment they surrender any part of the sovereignty, they cease to be perfect states. Nor, in the so-called Staatenstaat could there be any peaceful method of securing obedience: individuals yield to judicial process because it is backed by overwhelming force; states, in the last resort, yield only to war. There may be states within a federation, but no states within a state.

Historically, also, the distinction is untenable. The Holy Roman Empire had courts, taxes, and even subjects not connected with the states. In theory it had superior claims upon all the individuals within the Empire; in practice it abandoned control over the states.

§ 11. **The Staatenbund.**<sup>1</sup>—The second category is better established. Jellinek says: "When states form a permanent political alliance, of which common defence is at the very least the purpose, with permanent federal organs, there arises a Staatenbund." This form of government is distinguished from an alliance by the fact that it has permanent federal organs; from a commercial league by its political purpose; from a Bundesstaat by its limited purpose. In other words, under Staatenbund are included the weaker forms of true federal government, in which there is independence from other powers, and, within the purposes of the union, independence from the constituent states. A Staatenbund possesses a definite and permanent organism, though a limited range of power, and often very imperfect organs.

It is not essential to a Staatenbund that it be in terms perpetual; or that it require amendment by less than unanimous consent. If the treaty theory of federal government have any application, it

<sup>1</sup> **Staatenbund.** General references, *post* § 466; Jellinek, 172-197; Wheaton, Part I, c. ii, § 21; Geffcken's *Heffler*, 55, 56; Austin's *Jurisprudence*, 217, 264; Calhoun's *Works*, I, 163; *Federalist*, Nos. 9, 21, 39; von Brie, 47, 48.

is to the Staatenbund, for the instrument of government is usually framed by a diplomatic congress; and the members of the legislature may be bound by instructions of their state governments.

The Staatenbund form includes most of the federal governments which have existed. The Greek confederations (except perhaps the Lycian and Achæan) and all the mediæval leagues were of this type: even the strong modern unions of the United States, Germany, and Switzerland, have gone through the Staatenbund stage in their earlier history.

§ 12. **The Bundesstaat.**<sup>1</sup>—Between the Staatenbund and the more highly developed form, the Bundesstaat, no writer has described an accurate boundary. There are certain governments, notably those of Canada, Germany, Switzerland, and the United States, in which is found an elaborate and powerful central organism, including federal courts; to this organism is assigned all or nearly all the common concerns of the nation; within its exclusive control are war, foreign affairs, commerce, colonies, and national finances; and there is an efficient power of enforcement against states. Such governments undoubtedly are Bundesstaaten. Founded as they are on careful written constitutions, with a minute division of powers between the states and the union, they possess all the attributes of vigorous and independent nations, and cannot be likened to alliances. From the Staatenbund they differ in purpose, form, and powers; but the difference is only one of degree. The framers of such governments have in mind the development of a nation, rather than mere defence; they have set up a complicated machinery, with large resources and a great staff of officials, rather than the simple meeting of delegates usual in a Staatenbund; they have provided for the exercise of powers in a large way, rather than to confine the federal functions to defence; in cases of conflict with states, it is expected that the nation will carry out its will, rather than that the states will assert their independent powers. The difference is not one of kind; it is a difference of point of view, of expectation, of means to carry out the national will.

Toward this stronger form of union there has been a decided tendency in the last half-century. Under the successful example

<sup>1</sup> **Bundesstaat.** General references, *post* § 466; *Jellinek*, 253-314; *Wheaton*, Part I, c. ii, § 22; *Geffcken's Heftler*, 53-55; *Phillimore*, § 112; *Freeman, Federal Government*, 3-5, 9-11; *Dicey, Law of the Constitution*, 131-152.

of the United States, Switzerland and Germany have been transformed from Staatenbünde into Bundesstaaten, and Canada has been created. From a nominal organization as a Bundesstaat the United States of Colombia have become a single, centralized state. There is not now in existence a single Staatenbund; the most recently created federation, Brazil, has preferred the stronger form. It is expected that the approaching Australasian Confederation will follow the same principle.

§ 13. **Political conditions of federal government.**<sup>1</sup> — It has already been seen that the theory of federal government is rather an historical than a philosophic question. The rise of federal government, the development of the Staatenbund in mediæval times, the great importance of the Bundesstaat at present, all point to the fact that the federal government is a solution, or an attempt at a solution, of ever-present political difficulties. The varieties of form are due as much to a change of political conditions, from age to age, as to the growth of political ideas.

Almost all confederations have been aggregations of small units. Switzerland with its twenty-two cantons is made up of more than a hundred parcels of territory, each having its separate history: the German Empire of twenty-five states, includes upwards of three hundred once free and independent little nations. There are writers who see in the history of the United States a gradual agglomeration of towns into colonies, and of colonies into a union. It has, therefore, often been assumed that federation is a stage on the way to centralization. In the cases of Mexico and Brazil, however, the process has been one of segregation; and the appeals for the federation of the British Empire seem to prove that the system has a hold upon the imagination of civilized peoples, not as a convenient transition, but as an independent and permanent form of government.

§ 14. **Favorable causes.** — No popular interest, however, can take the place of certain predisposing causes, without which a federal government cannot be kept in operation. Of these, the first is that the states united should have had some community of origin or history. This is the case in the four great confederations,

<sup>1</sup> **Political conditions of federal government.** See *post* § 467. The best brief discussions are *Dacey's*, *Baker's*, and *Freeman's* articles and essays, and the extracts from *Mill*, *Crane and Moses*, and *Bentham*.

as it was the case in the mediæval leagues of cities and in the United Provinces. Even more important is the existence of common political interests. A consciousness of common nationality is an aid, but not an essential; it has much hastened the foundation of the German union, but has not been present in Canada. In the latter country, however, there was an earlier political connection, as was the case in the thirteen American colonies, and in Mexico. Common language is less important than it is usually considered: Switzerland exists peaceably without it. Nor has the want of a common religion seriously hindered the foundation of modern federations in Canada, Germany, and Switzerland.

A stronger bond of union is found in common national interests, which can be promoted by union. Most federations have owed their origin to the desire to unite the military strength of neighbors against foreign aggression; but for this impulse the Greek cities, the Dutch provinces, and the Swiss cantons could never have been brought together. The wish to promote and to defend foreign trade was important in the growth of the mediæval unions, and in the formation of the Constitution of 1787 in the United States; and the previous establishment of an unfettered internal commerce has been perhaps the strongest influence in the unification of the German Empire. The greatest danger of federal governments is that, in a change of circumstances, interests may cease to be common, and one part of the union may feel itself burdened for the benefit of another part.

To secure the uniformity necessary in dealing with great political and economic interests, a similarity of political institutions is necessary. The example of Germany has shown that it is possible to combine monarchies and republics in one federal union, but there never has been a successful federation where the parts of the union have had not substantially the same system of law and the same general political institutions. Canada and the United States are not exceptions, since Quebec and Louisiana, while possessing a different civil law, are in most respects assimilated to the rest of the country.

Since the Teutonic race has shown the greatest love for personal freedom, combined with the greatest respect for law, it is by that race that the great confederations have been established. More than in simple governments is willingness to yield to the will of the majority essential; for a minority of states feels stronger

than a minority of simple voters. On the other hand, it is in that race, also, that a habit of concession to the strong desire of the minority has been most cultivated.

Another requisite of federal union is what may be called the "federal sentiment," a preference for union, even at the sacrifice of some interests. A federal government is always a compromise, and can exist only among people accustomed to compromise, and to abide by compromises. To this fact is due the two great successes of federation in North America, and the slow and problematic development of federal government in Central and South America.

No particular form of government is essential in a federation, except that the central legislature must, in the nature of things, have a representative element, and is, therefore, altogether likely to spring from states having a representative system. The Holy Roman Empire, the English, Scotch, and German mediæval confederations acknowledged a monarch, as do Canada and Germany to-day. The Greek Confederations, Switzerland, and the United States have been republics. The United Provinces slowly changed from an autocratic republic into a monarchy. Monarchical Mexico and Brazil, taking on the federal form, have become republics.

§ 15. Advantages. — Being a compromise system, federal government has both advantages and disadvantages, when compared either with a system of small independent states or with a single centralized state. In convenience it is superior to the small states, because it diminishes the number of independent sovereignties, and offers a more permanent system. It also tends to peace by avoiding numerous petty causes of international dispute, and by protection from foreign attack. Germany, during the past fifty years as compared with the same country during the first half of the eighteenth century, is an illustration. Within the union, also, a federation secures peace: quarrels between the states are settled by pacific methods; and insurrections against states are put down by the common force. Intercommunication is encouraged, and local jealousies and sectional party spirit are less acute. *done to 18th century*

Most of these advantages are obtained by simple, centralized states; but among the people who have adopted it, the federal system is preferable, in the first place, because it can be obtained when centralization would be resisted. No known force could have compelled the American colonies or the German principalities and



free cities to unite into a single state. It is easier to get an expression of popular feeling in states than in mere administrative subdivisions. The political education of the people is better provided for when separate states are preserved. Local government is encouraged. The states sometimes act as balance wheels; the fear of offending a powerful state may restrain the general government from oppressive measures; and, finally, the continuance of the states, with their local privileges, often prevents the separation of parts of the country, which can endure unfavorable measures but would not endure complete subjection. There can be little doubt that the secession of the Southern States from the United States in 1860 would have come much earlier under a centralized government, and would have been much more difficult to deal with. The seceding states remained in the union longer, because they thought the bond could be broken, should they so desire, without civil war.

§ 16. **Disadvantages.** — Some corresponding sacrifices must be made in gaining the advantages of federal government. Since foreign affairs and other like concerns are exercised by the central authority, the functions of government are removed from the direct influence of most citizens; the high degree of political education gained in a state like Athens, or a city like Nuremberg, or a colony like Plymouth, is lost.

As against the large centralized state, a federation has the considerable disadvantage of greater complication. To the simple relations of state with citizen are added those of federation with state, and of federation with citizen. The division of power between central and state governments is a constant source of difficulty and ill-feeling. As a military agent, federal government is inferior; the experience of the United States from 1861 to 1865 proves the difficulty of bringing out the full strength of the country; and the military greatness of Germany is not due to the federal character of the Empire, but to the practical consolidation of the government in all military and naval matters. The maintenance of authority is more difficult than in simpler governments; the states form centres of resistance and organization in case of civil war, and impede the prompt suppression of smaller risings.

The permanence of federal government is less assured because it is less essential. The destruction of a centralized system means anarchy; but the federal head may be paralyzed without affecting the state governments or seriously disturbing order; and the crea-

tion of permanent majorities in the national legislature, which may for years together be opposed to the majorities in several states, brings about a condition of unstable equilibrium. Another evil of federal government is the tendency to carry national politics down into state and municipal politics; to consider state governments not as chosen for the carrying out of state purposes, but as counters in national political combinations.

Federal government requires a high degree of political education, and a high spirit of observance of law; it is, therefore, less adapted for immature countries. Where the conditions are favorable, and the system is established in a natural manner, federal government secures a large measure of personal freedom, combined with a removal of petty hindrances to trade and intercourse, and a retention of interest in the local concerns which come nearest to the individual.

## CHAPTER II.

### ANCIENT CONFEDERATIONS.<sup>1</sup>

- § 17. Elements of ancient confederation.
- § 18. Greek religious unions. The Delphic Amphictyonic Council.
- § 19. Greek unions under a hegemony. The Delian League.
- § 20. Greek political leagues. The Achæan and Ætolian.
- § 21. Roman revival of Greek confederations.
- § 22. Early Italian leagues.
- § 23. Federalism under the Roman Empire.

§ 17. **Elements of ancient confederations.**—Neither the nature nor the conditions of federal government can be deduced by abstract reasoning; they can be understood only from the experience of ages; and to the Greeks we owe, like most of our political ideas, the first examples of federation. Treaties, alliances, and leagues are older than history; Assyria was a realm of composite states; but the first true federation arose on Greek soil. The discovery—for such it was—was the more remarkable because the fundamental political ideas of the Greeks were as much opposed to a union of states as to a centralized state. The unit was the city: to the Greek mind, union meant the subjection of one of the parties to the other; to give up independent powers of war and commerce, seemed to the Greek statesmen a giving up of existence. The city was a form of government which stimulated patriotism, and applied power very simply and expeditiously. Furthermore, the principle of proportionate representative government was unknown to the Greeks as to the Romans; and among the Italian cities, as among the Greek, there was a fatal inequality of influence in all the leagues and confederations formed.

<sup>1</sup> **Ancient confederations.** There is no treatise on the subject in general, except *Sainte-Croix, Des anciens Gouvernements fédératifs* (1799), long since antiquated. *Freeman* confines himself to the Greek systems. In *Pauly, Real-Encyclopädie der classischen Alterthumswissenschaft* are articles with abundant references.—No attempt has been made to refer to periodical literature.

In many respects, however, the political conditions among Etruscan, Latin, and Greek cities were singularly favorable to federal government. Each group had common race, language, religion, and religious festivals; the cities were near each other, yet had no tradition of a former centralization; they had many relations of trade; they joined in the presence of foreign enemies too powerful for any state to resist alone. Many of the cities had colonies, suggesting unions of mother and daughter states. They had, especially in Greece, great religious and social festivals, for which local boundaries were obliterated. There was in Greece a spirit of practical statesmanship, which saw both the advantage and the possibility of union, and which made several encouraging beginnings.

The Greek federal unions<sup>1</sup> were unable to cope either with

<sup>1</sup> **Greek confederations.** BIBLIOGRAPHIES. *E. Hübner, Bibliographie der klassischen Alterthumswissenschaft* (1889), 194-203; the notes to the works cited below, especially *Busolt und Bauer* and *Herrmann*. — HISTORICAL GEOGRAPHY. *Droysen, Historischer Hand-Atlas*, Plates 6-8; *Freeman, Historical Geography of Europe*, I, c. ii, § 8, II, Plates i-iv; atlases of classical geography. — HISTORICAL ACCOUNTS. *Freeman*, in his *Federal Government* has exhaustively treated this subject. His history is, however, rather an account of the influence of federation in later Greek history than a description of the systems in operation. It nearly supersedes the three older books on the subject: *Sainte-Croix, Anciens Gouvernements fédératifs* (1799, another edition 1804); *Tittman, Darstellung der griechischen Staatsverfassungen* (1812), Buch viii; and *Kortum, Zur Geschichte hellenischer Staatsverfassungen* (1821). There is some discussion of Greek leagues in general in *Kuhn, Entstehung der Städte der Alten* (1878); *Fischer, Ueber die Bildung von Staaten und Bündeln oder Zentralization und Föderation im alten Griechenland* in his *Kleine Schriften* (1849), I, 308-381; and a valuable short monograph, *Ueber die Bundesverhältnisse der Griechen*, in *Jahrbücher für Gesellschafts- und Staatswissenschaften*, vol. 6, pp. 479-499 (Dec., 1866). The general historians of Greece close their works at the beginning of the federal epoch, except *Thirlwall*, vol. viii. — BRIEF ACCOUNTS. *Freeman, Greece during the Macedonian Period*, in *North British Review*, 425 (Aug., 1854), reprinted in his *Historical Essays, second series*, 228-255; *Woelsey*, II, 175-194; *May, Democracy in Europe*, I, 48, 49, 129-131; *Mann, Republics*, 43-49, 77, 78, 118-129; *Fiske*, 59, 75-77. Much neglected material may be found in the German manuals of Greek antiquities: *Wachsmuth, Hellenische Alterthumskunde* (1846), I, 20-26, II, 62, 67, 73, 158 (also an English translation); *Schwalbe, Handbuch* (1854), §§ 73-79; *Schömann, Antiquitates juris publici Græcorum* (1838) and *Griechische Alterthümer* (1871-73), II, Part IV, pp. 1-114. There is a noteworthy treatment of the subject in *Herrmann, Lehrbuch der griechischen Staatsalterthümer*, 6 ed. (1889), I, §§ 11-14 (an English translation of an earlier edition, 1836); *Gilbert, Handbuch der griechischen Staatsalterthümer* (1881-85), I, 389-417, II, 14, 21-31, 33, 47-57, 104-123, 184, 404-419; especially the excellent brief account of *Busolt, Griechische Staats- Kriegs- und Privatalterthümer*, in *Iwan Müller, Handbuch der Klassischen Alterthumswissenschaft*, IV, 4 (1887), §§ 54-71, 233-248. The reviews of *Freeman's* book (see *post* § 464) contain some criticism of the Greek system. Periodicals have not been searched for articles on Greek federation.

Macedon or with Rome ; and they went down in the general subjugation of Greece. The failure among Etruscans, Romans, and Greeks was due to the same causes : an unwillingness to sacrifice immediate local interests to a prospective good shared by all the members of the union ; and a want of consideration for the weaker members of the union. The cities would not give up sufficient power to make the union strong ; and if it became strong, a powerful city assumed the hegemony. The principle of proportional representation was undeveloped ; the popular assemblies were influenced by the city in which they were held ; most fatal of all, the pressure of foreign enemies caused the cities rather to divide than to unite ; they made separate terms with the Persian or Macedonian or Roman, rather than enter into a general union.

§ 18. **Greek religious unions.** **The Delphic Amphictyonic Council.**<sup>1</sup>—In one respect, the Greeks, from the beginning to the end of their national history, had a strong national feeling ; they worshipped the same gods, and had a tradition of common religious observances. The great games, which were closely connected with religious festivals, strengthened this bond. For the care and protection of the famous shrines, and for the management of the games in their honor, there were religious assemblies, or amphictyonic councils, with members from all parts of Greece, deliberating on matters of common concern.<sup>2</sup>

The most important and the oldest was the Amphictyonic Council that assembled periodically at Thermopylæ or at the temple of Delphi. Members of twelve Greek tribes were included, although several of the most important sections of Greece were not represented. The first appearance of the Council in the records is about 595 B.C. ; but it was undoubtedly already a long-established institution. It set a price on the head of the betrayer of Thermopylæ, in 479 ; it instigated several so-called sacred wars ; it called in Philip of Macedonia, in 346. It never had genuine political functions, and its federal importance is due to the fact that it

<sup>1</sup> **The Amphictyonic Council.** BIBLIOGRAPHIES. *Busolt und Bauer*, § 73 ; see references in previous note. — ACCOUNTS. *Tittmann*, *Ueber den Bund der Amphiktyonen* (1812) ; *Sauppe*, *Commentatio de Amphictionia* (1873) ; *Bürgel*, *Die Pylæisch-Delphische Amphiktyonie* (1877) ; *Busolt*, §§ 61-67 ; *Herrmann*, §§ 13-14 ; *Woolsey*, II, 175-179 ; *Freeman*, 123-143 ; *Sainte-Croix*, I-114, 271-328 ; also the standard historians.

<sup>2</sup> **Minor religious unions.** *Sainte-Croix*, 115-162 ; *Busolt und Bauer*, § 68 ; *Herrmann*, § 12.

gave to the Greeks an example of common action. Mr. Freeman aptly compares it to the general ecclesiastical councils of mediæval Europe. The Amphictyonic Council was in no sense a government and can hardly be called a league; it was not held inconsistent with repeated wars between its members.

§ 19. **Greek unions under a hegemony. The Delian League.** — One of the reasons why centralization and federation were alike difficult in Greece was the fact that there was no predominating state. The experiences of Holland within the United Provinces, and of Prussia within the German Empire, have taught the possibility of framing a federation about a powerful nucleus, and several Greek states in succession attempted the same thing; all failed for want first of power, and afterward of moderation.<sup>1</sup>

The most hopeful moment for a federation of Greece was after the defeat of the Persians, in 480, by the joint efforts of the Greek states. About 475 the powerful Ionian cities of the Ægean Sea and the Asiatic shore united with Athens in the League or Confederacy of Delos. Each was to contribute toward a fund for common military defence; the treasury was at Delos. But the sea lay between them; their defence must be naval, and Athens was the great naval power. In a few years most of the cities sent money contributions instead of ships; and Athens, president from the first, became the master. The Confederation of Delos became the Empire of Athens. The confederate treasure was removed to Athens, and was used to beautify the city; the vitality of the organization was absorbed into the leading state. From equal allies the other cities became dependents; though usually permitting freedom in their local government, Athens could not permit parties hostile to her to gain the ascendancy. In her courts, therefore, were tried important cases arising in the allied cities, and revolts were pitilessly punished. The government of Athens exercised all the powers of a confederation without constitutional authority, and without representation of the other members. When, therefore, Athens suffered reverses in the Peloponnesian War, her allied cities dropped away and became enemies; and with her downfall in 404 the Confederacy was at an end.

<sup>1</sup> **Greek unions under a hegemony.** BIBLIOGRAPHY. *Busolt und Bauer*, §§ 237, 244, 248. The standard historians: *Grote*, *Curtius*, *Droysen*; *Kuhn*, *Ueber die Entstehung der Städte der Alten* (1878); *Köhler*, *Urkunden und Untersuchungen* (1869); *Busolt*, §§ 233-248.

Sparta had now obtained the hegemony; but the Spartans were far less accustomed than the Athenians either to constitutional limitations or to regard for subject states. The cities found that they had exchanged Athenian influence for Spartan harmosts with almost dictatorial powers; and that even the Athenian democracy was more sympathetic with them than the oligarchy of Sparta. In the Peace of Antalcidas (387) Sparta entirely abdicated her power in Asia, which had already been shaken by the revolt of the Ionian cities. The spirited rising of Thebes in 379 was the beginning of the downfall of Spartan supremacy in European Greece. A second confederation under the lead of Athens, established in 378, was unable to restore the power and prestige of the Athenian Empire.

The supremacy of Thebes (371) seemed to lay the foundation for a more rational union of Greece; it was the policy of Epaminondas to create and support allies, making Thebes only the first among equals; his death in 362, before his scheme had taken root, took away the last chance of union grouped about a central power: for the Macedonian who quickly followed was not only a conqueror, but also an alien.

§ 20. **Greek political leagues. The Achæan and the Ætolian.** — Three-quarters of a century of confusion followed the first Macedonian invasion of 339, without any progress in federation. The so-called Congress of Corinth, formed 338, was rather a hegemony than a confederation. But the Macedonian supremacy had at least prevented centralization about a Greek power, and had at the same time brought about a willingness to give up entire independence, for the sake of destroying foreign rule.✓ About 274 B.C. ten of the cities lying near the southern coast of the Gulf of Corinth formed a union, called the Achæan League,<sup>1</sup> from the district of Achaia, of which some earlier traces are to be found in the period of the Peloponnesian War. They were among the weaker cities of Greece, not one of them having important commerce; their object was wholly political, — to rid themselves of Macedonian and domestic tyrants.✓ By the accession of Sikyon in 251, with its large and rich population, the league became a great political power. Under the enlightened leadership of Aratos, many times re-elected to the

<sup>1</sup> **Achæan Confederation.** General references, ante § 17; *Klatt, Forschungen zur Geschichte des achäischen Bundes* (1877); *Weinert, Die achäische Bundesverfassung* (1881); *Dubois, Les ligues étoliennes et achéenne* (1884); *Freeman*, 218-322, 353-715; *Woolsey*, II, 181-193; *Washington*, IX, 523.

chief magistracy, it waged successful war and rose to be the first power in Greece; its territory steadily grew; it embraced Corinth and offered Athens a place. Before the death of Aratos in 213 B.C. the league had begun to come into unfriendly relations with the two powers between which it was finally ground to powder. Between Macedon and Rome, neutrality was impossible; the confederation was obliged to choose Rome; from 198 to 146 it led a separate though dependent existence. In 145 it was crushed and destroyed. "For a hundred and forty years," says Freeman, "the league had given to a larger portion of Greece than any previous age had seen, freedom, unity, and general good government."

Of all the confederations of history before 1781, the Achæan had the best military and foreign system: it had an excellent executive, and even the rudiments of a federal judiciary. The legislative department was the most defective; the great popular assemblies, although they voted by tribes, were sensitive to the influence of the city in which they met; and the whole system was too dependent on the personal weight of its great men. The constitution was elaborate and was probably committed to writing; but in the midst of external war and internal confusion, the duration and success of the league depended on the spirit of concession and forbearance which distinguished this from all other Greek leagues.

On the north side of the Gulf of Corinth, among the group of Ætolian mountain communities,<sup>1</sup> grew up a league which was frequently at war with the Achæan. In outward form the Ætolian League much resembled its neighbor; but its people were fewer and much less highly civilized, and Ætolia had many outlying dependencies, while Achaia was compact. In many respects the Ætolian League suggests the old Swiss Confederation; the people of both were mountaineers, fond of conquest, and hard masters to conquered peoples. Ætolia was one of the first Greek regions to come into contact with the Romans: the two powers, in 211, made a compact for the mutual conquest of Greek neighbors; in 189 the Romans reduced their Grecian friends, and Ætolia became the first "dependent ally" of Rome: the federation was despoiled of large parts of its territory, and lost its distinctive federal government.

<sup>1</sup> **Ætolian Confederation.** General references, *ante* § 17; *Brandstätter, Geschichte des ætolischen Landes* (1844); *Freeman*, 323-351, 353-636; *Woolsey*, II, 180-181.



Aside from the unpatriotic and fatal connection with foreign enemies, and the cruel treatment of conquered cities — traits shared with Sparta — it is difficult to see how the Ætolian League deserves the name of “nest of robbers and pirates” bestowed upon it by Mr. Freeman. It was singularly strong, and its power was well concentrated. The building up of a military and political power out of elements so crude is the great triumph of Greek federation.

The Achæan and Ætolian leagues were only the strongest and most persistent among many Greek unions.<sup>1</sup> The Phocians and Akarnanians acted as collective bodies, and seem to have had common federal authorities. Akarnania and Epeirus had general coinage systems. In 379 B.C. Olynthos attempted to combine the neighboring cities into a league. The only union which can be considered as a rival to the fame of the two greater is the Bœotian; as in several other cases, a religious or amphictyonic union preceded the political, but, though less renowned than the Achæan Confederation, the Bœotian is the earliest example on Greek soil of a true federation. From the first Thebes was the heart of the league. There were federal magistrates and a federal senate. Under the later leadership of Pelopidas and Epaminondas, the form continued, but practically Thebes was supreme. It was re-established in 316 B.C., and was broken up by the Ætolians, formed again, and finally dissolved by the Romans about 171. The Arkadian league, set up by Epaminondas as a rival to Sparta, had many federal features, but fell to pieces at his death.

§ 21. **Roman revival of Greek confederations.**<sup>2</sup> — To Rome may be ascribed the final failure of the Greeks to develop a national confederation; the time was favorable, the country was becoming accustomed to the idea, when Greece totally lost her independence. Nevertheless, the Romans looked upon Greece with admiration, and almost with tenderness; so long as the country remained quiescent, and formed no barrier to further advances eastward, the more famous cities were allowed to carry on their own government. This privilege was accorded to several of the old confederations. Thus the Amphictyonic Council was renewed

<sup>1</sup> **Minor Greek political unions.** General references, *ante* § 17; *Freeman*, 144–208; *Sainte-Croix*, 203–233; *Busolt*, §§ 69–73.

<sup>2</sup> **Revival of Greek leagues by the Romans.** *Mommsen*, *Provinces*, I, 252, 260, 264–267, 298, 301, 307–308, 329; *Freeman*, 136–139.

by Augustus, B.C. 31, and lasted half a century; the principles of representation according to importance and of curial votes was introduced. The Bœotian League was restored, and even the Achæan was revived, held an annual assembly, and came to consider itself the representative of Greece. Hadrian created a body known as the Panhellenes: it was no more than a political club which amused itself with granting certificates of Hellenism to Greek towns outside of Hellas.

Among the Ionian cities, unions never took root; the ancient league of Asiatic insular cities which existed before the Persian invasion left little trace. Even the pressure and counter-pressure of Persia, Athens, and Sparta could not unite them; but among the Lycians, a people of Asiatic stock and of Hellenized civilization, one of the most perfect of ancient leagues was formed, just at the time when the Greek leagues were destroyed. In 188 B.C. the Lycians<sup>1</sup> appeared united in a confederation; it was formed by the emperors after the conquest of its neighbors by Rome, and it retained its institutions down to 54 A.D. It is chiefly remarkable for the fact that the larger cities possessed more votes than the smaller. This is the only instance of a proportionate legislative representation in any ancient league. The Delphic Amphictyonic Council had more members from some tribes than from others; but the vote was not proportional.

§ 22. **Early Italian leagues.**<sup>2</sup>—The conditions in Italy in early times were apparently more favorable for union than in Greece. Of the four principal races of the peninsula, two showed a decided tendency to federation. At the dawn of history, the Etruscans had several unions, each of twelve cities; they were, however, rather leagues than confederations, and did not so much as defend

<sup>1</sup> **Lycian League.** *Freeman*, 208–217; *Woolsey*, 193–194; *Washington*, ix, 521.

<sup>2</sup> **Early Italian leagues.** BIBLIOGRAPHY in *Hübner, Bibliographie*, 203–206, 211, 212.—HISTORICAL GEOGRAPHY. *Freeman*, II, Plates vi, vii.—ACCOUNTS. There is no monograph. *Mommsen* has given attention to the subject: *Römische Geschichte*, I, 37–40, 97–111, 124, 125, 217–248, 338–382, 538–558; *Dickson's* translation, I, 42–44, 113–118, 130, 240, 374–410, 413–418, 427, 428, 435–439, 445, 460–463, II, 145, 352, 353, III, 245, 266, 268, 271–312, 336, 358, 359, 374; *Cuno, Vorgeschichte*, 2 Theil, 560–588; *Herzog, Geschichte*, I, 14–16, 28, 231–238, 289–295, 430–433, 494–496; *Sainte-Croix*, 233–260; *Ilne, History*, I, 171, 233, 291–295, 337, 338, 349–353, 356, 366, 373–375, 391.—In the compendiums passages will be found in *Becker, Handbuch* (1843–49), III, 25–37; *Nägele, Studien* (1849), §§ 36, 37, 55–72; *Marquardt, Römische Staatsverwaltung* (1873–80), I, 44–80, 208–210, 322–332, 503–515; *Madvig, Verfassung und Verwaltung* (1882), II, c. vii, §§ 5, 8, 11, 15.—Periodicals doubtless contain other material.

each other against foreign attack; eventually they were broken up, either by the Romans, or by the third race, the Gauls. The Greek cities in Italy united, and were detached one by one before the advancing power of Rome. The city which was to rule the civilized world was itself in earliest times a member of a Latin league, one of the thirty cantons united under presidency of Alba, for a common religious rite. After the destruction of Alba, Rome became allied to the league, which had an assembly and a dictator; peace was to be observed within the league, and common defence against internal enemies. In no long time Rome began the century-long process of first assuming a hegemony over her neighbors, then a protectorship, and then a supreme control. In the middle of the fifth century B.C. the Latin towns had become substantially independent. In 341 B.C. the Latin cities rose, were subdued, and became completely dependent.

The tribes of Central Italy also had confederations; but the only one which sensibly affected Rome was that of the Samnites. In circumstances they suggest the Ætolians; but they were much less closely organized, and they, too, were compelled to accept the Roman yoke. Thenceforward no permanent combination of cities or of mountain cantons existed in Italy, except the common control of Rome.

§ 23. **Federalism under the Roman Empire.**<sup>1</sup> — Republican and imperial Rome were alike in their relations to the territory added by conquest; in great matters — war, relations with foreign powers — there was complete subjection to the Roman policy. No legal means of opposition to the government centred at Rome existed; and resistance was punished often by annihilation. As regards internal affairs, the cities, and even, in some cases, the provinces, had almost undisturbed self-government. The effect which usually follows from federation was present, — a division of powers between local and central organs. The element which constitutes the essence of federal government was absent; the people, very imperfectly represented in their own countries, were not represented at all in the republican or imperial governments. Provincial assemblies, with powers of complaint, were summoned. But in Spain the cantonal unions which had existed disappeared.

<sup>1</sup> **Leagues remaining under the Empire.** *Mommsen, Provinces* (English translation by *Dickson*, 1885), has a few scattered references: I, 35, 60, 71-73, 90-93, 168, 191. See also *von Brie, Bundesstaat*, 11; *Arnold, Provincial Administration*, 201-216.

In Gaul there was an assembly representing the three tribes, a shadowy suggestion of federation; and cantonal unions were acknowledged. A similar permission to regulate the affairs of neighboring cities or cantons by a collective government was given in Greece (§ 22). But the proconsul or the proprætor everywhere could call in the might of Rome. The feeble imitations of former federations set up by Rome were the last flicker of the old federal spirit. When in A.D. 54 the Lycian League ceased to exist, no other federal government appears in the world's history for more than a thousand years.

## CHAPTER III.

### *MEDIAEVAL LEAGUES AND NATIONAL CONFEDERATIONS.*

- § 24. Italian leagues (1167-1250).
- § 25. The Rhenish Confederation (1254-1330).
- § 26. Minor German leagues.
- § 27. The Hansa (1367-1669).
- § 28. Scotch burghs (1295-1707).
- § 29. Cinque Ports (1278-1660).
- § 30. The Holy Roman Empire (1526-1806).
- § 31. The Swiss Confederation (1291-1798).
- § 32. The United Netherlands (1576-1746).

§ 24. **Italian leagues (1167-1250).**<sup>1</sup>—During nearly five centuries the Roman Empire impressed upon the world as a principle of government the centralization of power in a vast territorial state, in which the cities were elements, but not units. That tradition long operated against the development of separate states, and was continued in the Byzantine Empire. The feudal system, notwithstanding its disintegrating tendencies, perpetuated the idea of a nominal centralization; and the cities arose under the patronage, if not under the control, of the territorial sovereigns.

<sup>1</sup> **Italian leagues.** BIBLIOGRAPHY. *G. Ottino, Saggio di una bibliografia della Lega Lombarda*, in *C. Cantu, Omaggio della Società Storica* (1876). A bibliography might be made up by search among periodicals and Italian and German books.—HISTORICAL ACCOUNTS. No systematic account in English has been found. Information may be found in *Sismondi, Italian Republics* (1832), c. ii, iii; *Hallam, Middle Ages*, I, c. iii, Part i; *Milman, History of Latin Christianity* (1861), Book viii, c. vii, Book ix, c. iii; *Balzani, The Popes and the Hohenstaufen* (1889); *Chenier, Histoire de la Lutte des Papes* ( ). The important treatises are: *J. Voigt, Geschichte des Lombardenbundes* (1818); *Hegel, Geschichte der Städteverfassung von Italien* (1847); *C. Vignati, Storia diplomatica della Lega Lombarda* (1866); *C. Cantu and others, Omaggio della Società Storica Lombarda al 7 centenario della Battaglia di Legnano* (1876); *L. Tosti, Storia della Lega Lombarda* (1886); *Giesebrecht, Geschichte der deutschen Kaiserzeit* (1880).—BRIEF ACCOUNTS in *Mann, Ancient and Medieval Republics*, c. ix, pp. 410-436; *May, Democracy in Europe*, I, 283-288, 299-303. *Freeman* has an essay on *Ancient Greece and Mediæval Italy* in his *Historical Essays, second series* (1880), 1-52; reprinted from *National Review* (Oct., 1862).

About the twelfth century, however, many of the conditions of ancient cities were reproduced. Many cities became practically independent; they had large military strength; they had close commercial relations with each other. Two reasons, therefore, brought about a second era of confederation: the cities desired to protect commerce between themselves, against lawless robber-knights and potentates; and they desired to secure and to extend their political freedom against neighboring states, and even against the Emperor.<sup>1</sup>

The latter was the ruling motive in the first of the great mediæval confederations, the Lombard League. After a long period of little interference from the Emperor in Germany, Frederick Barbarossa undertook to assert his dominion over Italy. Every city was compelled to take sides with or against the representative of central power. In 1167 several of the Lombard cities united in a military league. Their combined strength was successful, and in 1183 Frederick confirmed the privileges of the cities. In 1226, and again in 1239, the league was renewed against Frederick II. A counter or Ghibelline league, with Pavia at the head, was also formed. Most of the Tuscan cities were united in defence of the Pope into a similar league about 1200.

All these leagues were temporary in character. The only central organization which appears was an occasional congress, the *Rectores Societatis Lombardiæ*, which consulted on common interests. Unwilling cities were sometimes compelled to join the union, and the bond was one of simple self-protection; when the wars ended, the leagues broke up; and several of the cities, as Milan, became centres of territorial states. No permanent federation resulted.

§ 25. **The Rhenish Confederation (1254-1350).**<sup>2</sup>—It is hardly too much to say that the Lombard League led naturally to the leagues of German cities. The exhausting efforts of the Hohenstaufen Emperors to secure dominion in Italy compelled them to grant privileges to the cities in Germany; the weaker emperors, who followed, bought support with new charters and privileges.

<sup>1</sup> See the Holy Roman Empire, *post* § 30.

<sup>2</sup> **Rhenish Confederation.** *Schaab, Rheinischer Städtebund* (1843-45); *Menzel, Rheinischer Städtebund* (1871); *Busson, Zur Geschichte des grossen Landfriedensbundes* (1874); *Weizsäcker, Der rheinische Bund* (1879); *K. Beck, Zur Verfassungsgeschichte des Rheinbundes* (1890); the standard German histories and treatises on the Holy Roman Empire, *post* § 30; the treatises on the Hansa, *post* § 27.

The inability of the Empire to keep the peace or to protect commerce led speedily to the formation of great unions of cities, usually commercial in origin, but very soon becoming political forces of prime importance. The first of these was the Rhenish League, formed in 1254. The more important cities of the Rhine valley, from Basle to Cologne, were the original members; but it eventually had seventy members, including several princes and ruling prelates.

The league had *Colloquia*, or assemblies, at stated intervals; but, beyond deciding upon a general policy, and the assignment of military quotas, it had no legislative powers. There was, however, a *Kommission*, or federal court, which acted as arbiter in disputes between the members. The chief political service of the league was to maintain peace during the interregnum in the Empire (1256-1273). During the fourteenth century it fell apart, and many of its members joined the Hansa or the Suabian League.

§ 26. **Minor German leagues.**<sup>1</sup> — The significant principle of the Rhenish League is that it was made up of cities acknowledging the sovereignty of the Empire; it was an organization within a greater organization. To the mediæval mind there was no disloyalty in alliances which frequently opposed the will of the sovereign; and many other leagues were formed on the same model. Thus in 1377 seventeen Suabian cities, which had been mortgaged by the Emperor, united to defend their liberties. They received many accessions of German and Swiss cities; but in 1388 they were overthrown by Leopold III of Austria, and all combinations of cities were forbidden. A federal government they cannot be said to have possessed; but political, almost federal relations continued during the fifteenth century. The similar leagues of Frankfort and Wetterau were broken up about the same time. Other leagues of cities and cantons were in a like manner formed and dissolved,—among them the leagues of Hauenstein and Burgundy; and there was a confederation in Franche Comté, afterward French territory.

§ 27. **The Hansa (1367-1669).**<sup>2</sup> — All the mediæval leagues thus far mentioned were defensive, and had no extended relations

<sup>1</sup> **Minor German leagues.** In treatises on the Hansa, *post* § 27, and on the Holy Roman Empire, *post* § 30; Zurbonsen, *Der Westfälische Städtebund von 1253-1298* (1881); May, *Democracy in Europe*, 250-253.

<sup>2</sup> **The Hansa.** BIBLIOGRAPHIES. *Jastrow, Jahresbericht der Geschichtswissenschaft*

beyond their own borders. The great Hanseatic League, organized as a commercial union, developed into a political and international power, which negotiated and made war on its own account with foreign and German sovereigns; and which was for two centuries one of the leading powers of Europe.

As early as 1259 appear evidences of a commercial union between the cities of Lübeck, Rostock, and Wismar on the Baltic; in 1283 a Landfriedensbündniss was formed, which included several neighboring provinces. During the next century repeated alliances of like nature were formed. The first object of these unions was to protect the merchants of the associated towns in foreign countries. A secondary and far more important purpose was brought upon the league by the threatening attitude of the king of Denmark. In 1367 a great league was formed at Cologne, which united the Baltic cities and many inland towns against him. Most, but not all, the members were included in the Holy Roman Empire. Many of them were "immediate," and thus relieved from allegiance to any territorial prince. About this time the term "Hansa" began to be used. Success in the war made the confederation the leading power of the Baltic; and for about two centuries it controlled the trade between Russia and the West. Eventually, most of the cities of North Germany, from Livonia to Denmark, became members. The growth of the Russian power in the east, the discovery of the Archangel route for English trade, and the expulsion of the Hansa merchants from England in 1598, united with the growth of Sweden, caused the decline of the inter-

(1878-1889); *Dahlmann und Waitz, Quellenkunde*, 3 Aufl. (1883); *Mühlbrecht, Wegweiser*, 4, 5, 59, 195, 222; see also treatises below and *post* §§ 30, 47.—TEXTS AND RECORDS. *K. Köpfmann and others, Hanserecesse* (1870- ); *Höhlbaum, Hansisches Urkundenbuch* (1876-86); *Wehrmann, Lübeckische Zunftrollen* (1864); *Hansische Geschichtsblätter* (1872-90).—HISTORICAL GEOGRAPHY. *Droysen, Atlas*, Plate 28; *Freeman, Historical Geography*, 1, c. xi, § 3.—TREATISES AND FORMAL HISTORIES. *Sartorius, Geschichte des Hanseatischen Bundes* (1801); *Mallet, De la Ligue Hanseatique* (1805); *Sartorius*, edited by *Lapfenberg, Urkundliche Geschichte des hansischen Stahlhofs zu London* (1851); *Gallois, Hansabund* (1851); *Bartha, Geschichte der deutschen Hansa* (1853-54); *Worms, Histoire Commerciale de la ligue Hanseatique* (1864); *Schäfer, Die Hansestädte und König Waldemar* (1879); *Schäfer, Die Hansa und ihre Handelspolitik* (1885), a good short account; *Winckler, Die deutsche Hansa in Russland* (1886); *Helen Zimmern, Hansa Towns* (1889), the best account in English.—BRIEF ACCOUNTS. *Denicke in Sammlung gemeinverständlicher Vorträge*, Band 19, p. 36; *Foreign Quarterly Review*, vol. 7, 130. This list might be much increased by search among German bibliographies and periodicals.



national power of the Hansa; and the religious struggles of the sixteenth century, followed by the 'Thirty Years' War, completed the ruin of the confederation. The last attempt to hold a federal diet was in 1669. The name Hansa is still retained as a title of honor by each of the three cities of Hamburg, Lübeck, and Bremen.

In organization the Hansa showed a federal spirit rather than a federal form. The central authority was the Bundestag, or assembly of instructed delegates; but the large cities were practically centres of groups of smaller neighbors, and although a majority vote of the delegates was binding, the consensus of most of the large cities was necessary. At the same time the cities were represented in the imperial Reichstag, and accepted imperial laws and administration. Throughout the history of the confederation, Lübeck took the lead in all important matters. The great object of the league was to secure a commercial monopoly for its members, and an effective machinery of embargoes and interdicts was brought to bear upon nations which refused to the Hansa its accustomed privileges. The league made war and peace and conducted a common diplomacy; and the freedom of the members from external interference was assured. There was also some provision for judicial settlement of disputes between the members. As a political organization the confederation lacked unity; and it proved unable to preserve its members from the horrors of the Thirty Years' War. But it aided to maintain peace in troubled times; and the tradition of the Hansa undoubtedly had effect in the foundation of the Zollverein of 1834, and thus in the present federalization of Germany.<sup>1</sup>

§ 28. **Scotch burghs (1295-1707).**<sup>2</sup>—The impulse of commercial cities to confederate, even while admitting the supremacy of a sovereign, was not confined to Germany, but was shown throughout Western Europe. The "Hermandad" of Spain and the "Hanse de Londres" of Flemish and French cities were of a similar type. Some traces may be found of a confederation of cities in Ireland. In Scotland, however, there is still in existence a

<sup>1</sup> See *post* §§ 47, 50.

<sup>2</sup> **Scotch burghs.** *Innes, Scotch legal Antiquities*, 113; see also *Report of Municipal Commission, Scotland* (1835-36); *Miscellany of Scottish Burgh Records Society, Introduction* (ed. 1881). The best account is *Mackay, Convention of royal Burghs* (1884). The records have been published by *Marwick*, others by *Innes*.—Consult also *Encyclopædia Britannica*, 9th ed., Art. Buroughs.

league of cities of which the origin may be traced to the so-called Parliament of the Four Burghs, which is mentioned as early as 1295. In 1487 all the Royal Burghs in Scotland were invited to send representatives to an annual meeting, and the assemblies have been repeated to the present day.

The peculiarity of this association lies in the fact that it was created by royal authority, and usually supported the Crown against the nobles; and that the Convention was accepted as the organ of all Royal Burghs. The league had commercial regulations with the Hansa and maintained factories in ports on the Continent. In political matters, at home or abroad, it mixed very little, though it insisted on certain privileges when James became king of England. Disputes between Burghs were often adjusted by the Convention, and it busied itself in such matters as the establishment of inns, the erection of a College of Physicians, and, above all, in the commercial privileges of Scotchmen and of foreigners. By the Articles of Union of 1707, the rights and privileges of the Royal Burghs were guaranteed; among the privileges was that of assembly in convention; and meetings are still held for the discussion of commercial topics of common interest.

§ 29. **Cinque Ports (1278-1660).**<sup>1</sup>—Although the growth of cities in England in many respects was very like that on the Continent, there appears to be but one case of federation of cities, that of the Cinque Ports. As in Scotland, the league was formed under royal authority; but the purpose was very different. The Cinque Ports were the towns on the part of the coast most exposed to attack from over sea; and they received their privileges in order to aid them in defending the realm. For several generations they furnished ships, which took the place of a royal navy. The first charter which is preserved dates from 1278; but there is abundant evidence of earlier charters. The last assembly was held in 1887.

So far as the English government was concerned, the Cinque Ports were treated as a body of towns, each of which had by custom and charter extraordinary privileges of self-government; there was, however, a Lord Warden, or royal governor, over all the Ports. Within themselves, the Ports had an elaborate organization with

<sup>1</sup> **Cinque Ports.** *T. Mantell, Cinque Ports* (1828); local histories of Dover, Hastings, Rye, Sandwich. The best account is *Burrows, Cinque Ports* (1888); *S. Jeake, Charter of the Cinque Ports* (1728); see also *Encyclopædia Britannica*, 9th ed., Art. Cinque Ports; on a league of Danish boroughs, *Palgrave, English Commonwealth*, I, 644, 645.

many federal features. There was an assembly which regulated the Yarmouth Fair and decided on common naval and commercial matters. There was a hierarchy of "Head Ports," of "Limbs," or "Corporate Members," and of non-corporate members. There was the Court of Shepway, a common central tribunal, which eventually became merely a high court of appeal. In many respects, the peculiar government of the Cinque Ports was a survival of feudal conditions: they were relieved from ordinary laws of taxation, and were undisturbed in their local affairs, and for a time given a special representation in the English Parliament; in return, they rendered a special service, that of defending the realm on the sea. When the royal navy was developed under Henry VIII, there was no longer any need of the service; the privileges were for a time absorbed by the Lord Warden; and the assembly met only irregularly after 1600. The forms were still kept up, but the life of the league departed about the time of the revolution of 1643. The honorable sinecure of Lord Warden of the Cinque Ports, and the title of Baron, still borne by their members in Parliament, alone survive.

§ 30. **The Holy Roman Empire (1526-1806).**<sup>1</sup> — Both the Italian and the German leagues of cities marked a gradual change in the conception of government. They were in spirit a denial of the

<sup>1</sup> **Holy Roman Empire.** BIBLIOGRAPHIES. *Dahlmann, Quellenkunde*, ed. *Waitz*, 3 Aufl. (1883), especially §§ 67-72; *Lorenz, Deutschlands Geschichtsquellen im Mittelalter*; see also *post* § 471; introductions to most of the German treatises on public and constitutional law; *Schulze, Lehrbuch*, § 118; *Pütter, Literatur des Staatsrechtes*, Absch. III; *Klüber, Fortsetzung*, § 245; *von Brie, Bundesstaat*, §§ 3-5. — TEXTS in the treatises and collections *post* § 41; *O. Stobbe, Geschichte der deutschen Rechtsquellen* (1860-64). — HISTORICAL GEOGRAPHY. *Droysen, Atlas*, Plates 22-45; *Spruner-Menke*, Plates 1-7; *Freeman, Historical Geography of Europe*, I, c. viii, § 1. — OF CONTEMPORARY DISCUSSIONS may be cited: *Pufendorf, De statu imperii germanici* (1667) (German translations, 1871, 1878); *Häberlin und Senckenberg, Umständliche deutsche Reichshistorie*, 52 vols. (1763-1806); *Pütter, Grundriss* (1763-95), and *Historische Entwicklung* (1786). — SYSTEMATIC HISTORIES: *W. Robertson, History of the Reign of Charles V* (1769); *Eichhorn, Deutsche Staats- und Rechtsgeschichte* (1808-23); *Zöpfl, Deutsche Rechtsgeschichte* (1836, 4 Aufl., 1871); *Giesebrecht, Geschichte der deutschen Kaiserzeit*; especially *Waitz, Deutsche Verfassungsgeschichte* (2 Aufl., 1865-85); *Bryce, Holy Roman Empire*, especially 340-365; *Turner, Germanic Constitution* (1888); *Jastrow, Pufendorfs Lehre von der Monstrosität der Reichsverfassung* (1882). — Almost all the German treatises on public and constitutional law contain brief accounts: *Schulze, Lehrbuch*, §§ 26-34; *Zachariä, Deutsches Staats- und Bundesrecht*, I, c. ii; *Aegidi, Staatswörterbuch*, Band 8, s. 702-719; *R. Schröder, Deutsche Reichs- und Rechtsgeschichte* (1887-88); see also *Hallam, Middle Ages*, II, c. 5; *Jellinek*, 142-145; *Koch, Histoire des Traités*, c. i, sec. i. — This list might be indefinitely extended, especially by search among periodicals.

right of the German king to absolute dominion; and the period of the greatest power of the Hansa is a period when the Holy Roman Empire was undergoing transformation from a centralized state into a loose confederation. The conception of a world-wide, empire which Charlemagne had almost realized, had been destroyed by the independent growth of a French and a Spanish nation.

After the resistance to Frederick II, by the Lombard League,<sup>1</sup> Italy could not be held within the Holy Roman Empire: after the development of Austria, of the Hansa, and of other powerful states, the Emperors were compelled slowly to yield charters, privileges, and exemptions to cities and princes, who gradually become territorial sovereigns. Maximilian I was the last Emperor who strove to create common imperial institutions. After his time the states became in all essentials politically independent: their policy might be regulated by fear of powerful neighbors, but not by respect for the Empire. The Reformation divided the Empire, not into two states, but into two hostile camps. The Thirty Years' War still further disintegrated the Empire and weakened its hold on the fragments. In the seventeenth and eighteenth centuries Prussia rose to be a power, then a kingdom, and finally the rival of Austria. During the last fifty years of its existence the Holy Roman Empire was a convenient expression for the region dominated by the resultant of Austrian and Prussian diplomacy. The complexus of small lay and ecclesiastical states in the west owed their continuance to the rivalries of their two powerful neighbors. The French Revolution destroyed this unstable political equilibrium: the lay states devoured the ecclesiastical; the large states absorbed the smaller. By 1806 France became the master of the western third of the Empire, and in that year Francis of Austria formally renounced the title of Emperor, and the confederation was at an end.

That under such conditions a general government could endure at all is a striking proof of the hold which the Empire had on the imagination of the German people. In its last estate the Empire was so confused and complicated that Pufendorf, in his legal treatise, calls it a "Monstrum." Of the three hundred or more states, about a fourth were free cities of the Empire; perhaps another fourth were ecclesiastical territories; the rest were hered-

<sup>1</sup> *Ante* § 24.

itary monarchies. Under the states, great and small, lay and ecclesiastical, republican and absolute, stood further dependent communities, cities, and parcels of territory. Founded in feudalism, the forms remained after the vigor of the system was gone. It was the constant aim of all dependents to become "immediate"; that is, to be free from all allegiance except to the Empire: and thus the number of petty states increased. It was the policy of the states to annex or "mediatize" their smaller neighbors.

The forms of a common government were preserved to the last. The Emperor in theory was a part of the legislative body, and had great powers of administration. Practically he could do little more than charter universities, grant patents of nobility, and declare war, which he might carry on at his own cost. The Reichstag, or legislative body, sat in three houses, each subdivided; and after 1648 in all matters affecting their religion there was the *itio in partes*, the right of each religious confession to veto the proceedings of the other. The procedure was so ingeniously confused that legislation was next to impossible. There were three federal courts, but they had little power, except in a few civil cases. The only method of securing the obedience of the states was by a formally declared civil war. The Empire was unable to protect its frontiers or to secure internal peace. It can hardly be said to have lived during the century preceding its death.

§ 31. **The Swiss Confederation (1291-1798).**<sup>1</sup>—While the Empire was becoming first a confederation and finally a congeries of states, the Swiss were slowly building up a union which lasted five hundred years, and after a brief interval of foreign conquest, has lasted another three-quarters of a century. Like the Rhenish Confederation,<sup>2</sup> it was founded among "immediate" members of

<sup>1</sup> **The Swiss Confederation.** BIBLIOGRAPHIES in the constitutional treatises: see *post* § 470. — TEXTS of documents in *Oechsli, Quellenbuch*, and elsewhere; see *post* § 470. — HISTORICAL GEOGRAPHY. *Droysen, Atlas*, Plate 25; *Freeman, Historical Geography*, I, c. viii, § 6. — ACCOUNTS in the standard histories and treatises: *Bluntschli, Geschichte des schweizerischen Bundesrechts*, especially I, 394-412; *Dändliker, Geschichte*, I, 342-398, 544-558, II, 335-348; *Rilliet, Origines*; *Koch, Histoire des Traités*, III; *Meyer, Geschichte*, and *Eidgenössische Bundesverfassung*; *Blumer, Staats- und Rechtsgeschichte der schweizerischen Demokratien* (1850-59); *Liebenau, Geschichtliche Ursachen der Entstehung* (1887); *J. Kopp, Geschichte der eidgenössischen Bünde* (1874-82); *Pfaff, Staatsrecht der alten Eidgenossenschaft*. — BRIEF ACCOUNTS in *May, Democracy in Europe*, I, c. viii, ix, 333-403; *Orelli*, 5-13; *Dubs*, pp. 8-10; *Calvo*, § 55; *Washington's Works*, IX, 524; especially introductions to *Moses and Adams and Cunningham*.

<sup>2</sup> *Ante* § 25.

the Empire during the confusion of the thirteenth century. The first three cantons were mountain communities, which in 1291 leagued together against their neighbors the Hapsburgs, who showed a desire to "mediatize" them. As the Hapsburgs held the Imperial dignity, the connection with the Empire was also involved. The union, called the "League of the Three Lands," was scarcely more than a defensive league; it made itself famous by the defeat of the Archduke Leopold, at Morgarten, in 1315; for several centuries to come the Swiss infantry had the same reputation for invincible courage as that possessed by the Spartans.

The league passed through a second phase by the addition, between 1332 and 1353, of the three rich commercial cities of Zurich, Berne, and Lucerne. Two other country cantons completed the "League of the Eight Old Places," which maintained itself for a century and a half against Austrians and Burgundians. A third phase of the confederation is marked by the accession, 1481 to 1513, of five new cantons, including four cities. This "League of the Thirteen Places," received no new members down to 1797, but was allied with several neighboring little confederations, especially the Grisons.

Nevertheless, the bounds of the confederation were much extended: the conquered districts, instead of being created into new cantons, remained subject, in some cases to individual cantons, in others to associations of cantons for their members jointly, or to the confederation as a whole. These dependent lands were administered with harshness, and their people had no political rights. The Reformation threatened permanently to divide the union; but the instinct of self-preservation compelled the Catholic and Protestant cantons again to draw together. The federal principle was expressed less in the government than in the habit of the Swiss of acting together in foreign affairs, and agreeing to settle internal difficulties otherwise than by war. The only federal organ was the Tagsatzung, or Diet, which was made up of instructed delegates: the idea that the minority of cantons was bound by the decision of the majority took root very slowly. In internal affairs they made few general laws, but depended on remonstrance and mediation.

During the eighteenth century the league lost much of its military prestige, and the cantons were rent by internal dissensions. The subject lands clamored for equal privileges with other Swiss. The aristocratic city governments got on badly with the democratic

cantons, and were confronted by a democratic party within their own walls. As a neutral state, lying between Austria and France, the confederation was subject to the influence of both. The cantons made direct treaties with foreign powers, and in 1797 the French entered under the pretended authority of a cantonal treaty, and the union was overthrown; the oldest republic in Europe was struck down by the newest.

§ 32. **The United Netherlands (1576-1746).**<sup>1</sup>—The seventeenth century is marked by the rise, glorious history, and gradual centralization of that confederation which in history and government most nearly resembles the United States of America previous to 1787. The Dutch provinces had never been politically united, except by subjection to a common sovereign. The cities of the Low Countries had long enjoyed peculiar privileges of self-government. The provinces extorted similar privileges for themselves, but had no common organization. The impulse to union was given by the relentless effort of Spain, in whom the sovereignty was then vested, to suppress the Protestant Reformation. It was combined with such a disregard of charter privileges that Catholic provinces at first joined the movement. In 1576, by the Pacification of Ghent, there was formed a central organization. In 1579 the final union was formed; and under that document the United Netherlands continued as a federal government until 1746, when an hereditary Stadholdership was accepted.

The organization of the Netherlands was distinctly federal. A congress of delegates, the States General, deliberated for the whole commonwealth, and had power of war and peace, and of levying federal customs duties; its recommendations, within the

<sup>1</sup> **United Netherlands.** BIBLIOGRAPHIES. *Tiele, Nederlandsche Bibliographie* (1884); *Foster, Monthly Reference Lists*, No. 100 (July, 1884); *Mead, Outline Studies of Holland*, 9-15; *Lalor, Cyclopædia*, II, 1003; *Adams, Manual*, 461-464. — HISTORICAL GEOGRAPHY. *Droysen, Atlas*, 38, 69; *Historischer Schul-Atlas*, Plate xxi. — HISTORICAL ACCOUNTS. *Juste, Histoire de la Revolution des Pays-Bas* (1855-63); *Wicquefort, Histoire des Provinces Unies des Pays-Bas* (1861-74); *Wenzelburger, Geschichte der Niederlande* (1879); *Kluit, Historia der Hollandische Staatsregierings*; *A. Young, History of the Netherlands* (1884); other Dutch authorities cited by *Lalor* (the author of this monograph has no acquaintance with them); *Motley* is nearly valueless for the constitution of the United Provinces. One of the most useful accounts is by *Treitschke, Die Republik der Vereinigten Niederlande*, in his *Aufsätze*, II, 401-543. — BRIEF ACCOUNTS. *May, Democracy*, c. x, xi, II, 1-84; *Woolsey*, II, 223-236; *Washington*, IX, 527-532; *Motley, Dutch Republic*, III, 409-417, and *John of Barneveld*, II, 167-169, 187; *Laveleye in Revue des Deux Mondes*, IV, 865-891 (1874).

purposes of the confederation, had the force of law. The Stadholdership of several provinces was frequently vested in the same man, who thus was almost a federal executive. The fundamental weakness of the Dutch confederation was that, under its constitution, the consent of every province was essential for all important measures, and within the provinces, by ancient custom, the consent of every city might be required. In practice, therefore, no sudden crisis could be met except by irregular methods; between the powerful province of Holland and the smaller provinces, there was a conflict of interest; and in cases of exigency, one party usually compelled the other provinces to join in the action it proposed.

Notwithstanding this defective organization, the force and energy of the people acting together won their independence, created a powerful navy, able to compete with the English on nearly equal terms, planted enduring and valuable colonies, and upheld a wise and firm diplomacy against aggressive neighbors. The long war with Spain, and the subsequent common history of the provinces, so knit the people together that the kingdom of Holland, founded in 1815, is to-day that one of the European countries most homogeneous in national feeling.



## CHAPTER IV.

### *THE FOUR GREAT EXISTING FEDERATIONS.*

- § 33. The United States of America.
  - § 34. United Colonies of New England (1643-1684).
  - § 35. Colonial unions (1690-1765).
  - § 36. Continental Congress (1774-1781).
  - § 37. The Confederation (1781-1788).
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  - § 40. The Confederate States of America (1861-1865).
- § 41. Switzerland.
  - § 42. The Helvetic Republic (1798-1802).
  - § 43. Act of Mediation (1803-1814).
  - § 44. Constitution of 1815 (1815-1848).
  - § 45. Constitution of 1848 (1848-1874).
  - § 46. Revision of 1874 (1874-1890).
- § 47. Germany.
  - § 48. Confederation of the Rhine (1806-1814).
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  - § 50. Zollverein (1834-1871).
  - § 51. North German Confederation (1866-1871).
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- § 53. Canada (1867-1890).
  - § 54. Effect of Canadian union on Australia (1866-1890).
  - § 55. Schemes of imperial federation (1875-1890).

§ 33. **The United States of America.**<sup>1</sup> — To the United States of America the world owes a revival, upon securer and more permanent bases, of the idea of federal government. The establishment of the present Union in 1787 is the beginning of the third and most successful epoch of federation.

Toward the end of the eighteenth century the federal idea seemed expiring in Europe. The city leagues had all decayed; the Dutch confederation had become centralized, and the Holy Roman Empire had disintegrated. The principle of centralized and absolute monarchy seemed gaining. In one large country

<sup>1</sup> For general works on the United States as a federation see *post* Appendix C, § 469.

only, England, had the old tradition of representative government continued; and in a dependency of that country, the American colonies, were laid the foundations of the first successful union in the world's history, in which the members were states of diffused population and at the same time of large area.

The success of the American Union lies in the fact that it was from the first adapted to the territorial conditions of the age. Cities were no longer anywhere independent political units; even Venice and the Swiss cities were in reality territorial states. Yet the Union could never have been established but for two exceptional conditions: the English colonies had in local concerns all the freedom of Swiss cantons; and, at the same time, they were accustomed to submit to the control of a central authority in all questions of foreign policy, in general jurisprudence, and in many financial, commercial, and military matters. When, therefore, common interests led the colonies into a common war, and the control of Great Britain was thrown off, the colonies, secure in their local freedom, never looked forward to entire independence; and they submitted to rapidly succeeding experiments in federal development, till in 1787-1789 they found themselves, to their own surprise, bound by the most complete federal government which had ever existed.

In the history of federation, the United States stands, therefore, as a pioneer; for it was different in basis and spirit from any union which had preceded it, and it has been the exemplar for all subsequent confederations. It was the first federation in history to provide itself with an independent and adequate revenue; it was the first to frame a judiciary having a jurisdiction equivalent to the federal powers; it was the first to commit all external and interstate commerce to the Union; it was the first entirely to forbid treaties of the States with foreign powers or with each other; it was the first to enter upon a policy of dispossessing itself of exclusive federal territory; it was the first to leave to the States unrestricted power over matters of police; it was the first to find peaceful means of securing the obedience of states.

Six stages are observable in the development of the Union: the actual union of the New England colonies; the attempts to unite the colonies in the first half of the eighteenth century; the Revolutionary union under a Continental Congress; the first Constitution, the Articles of Confederation (1781); the Constitution of

1787; and the slow growth of the federation since 1789. To this may be added an ephemeral offshoot, the Confederate States of America.

§ 34. **United Colonies of New England (1643-1684).**<sup>1</sup>—The germ of the federal union of the United States is to be found in the suggestion made in 1637 that four of the New England colonies should confederate, under the name "United Colonies of New England." May 29, 1643, they framed Articles of Agreement. The reasons assigned by the colonists for a union were the need of confronting foreign neighbors and of resisting Indian outbreaks; and "that as in Nation and Religion, so in other respects we bee and continue one." The four colonies were closely alike in race, religion, language, and polity; and the outbreak of civil war in England caused them to feel the need of mutual support against American enemies.

The Constitution of the confederation was very simple. The name was probably suggested by the Dutch United Provinces, whose independence was not even yet acknowledged by Spain. The "charges of all just warrs" were to be assessed on the colonies in proportion to their able-bodied men. Commissioners were to meet, to declare war, and to recommend measures.

The actual operations of the confederation were few. In 1653 a war upon the Dutch was threatened unless they withdrew their pretensions to the Connecticut valley. In 1675 troops were raised

<sup>1</sup> **United Colonies of New England.** BIBLIOGRAPHIES. *Lalor, Cyclopadia*, II, 1010; *Short, Reference Lists*, § 12; *Story, Commentaries*, § 102; *Barnwell*, p. ii; *Preston, Documents*, 86; notes to *Frothingham, Palfrey*, and *Bancroft*.—TEXTS. The articles are printed in: *Winthrop's New England*, II, \*101-106; *New Haven Colonial Records*, II, 562-566; *Hazard, Historical Collections*, II, 1-6; *Plymouth Colony Records*; *H. W. Preston, Documents*, 87-95; *Gilman, History of the American People*, 601-611. The proceedings are in *Plymouth Colony Records*, IX, X; *Connecticut Colonial Records*, III. —HISTORICAL GEOGRAPHY. Maps of the Colonies in *Thwaites, Colonies*, Maps Nos. 2, 3; *Doyle, English in America*, II, III, frontispieces; *Johnston, History of the United States for Schools*, 20, 67; *Scudder, United States*, 135; see general geographical authorities post § 469; *MacCoun, Historical Geography*, maps and text. —HISTORICAL ACCOUNTS. *Palfrey, New England*, I, 623-633, II, 151-154, 240-251, 320-327, III, 71-80, 432, 435; *Frothingham, Rise of the Republic*, 33-70; *Doyle, English in America*, II, 294-336, 366-409; *Bancroft*, I, 420-424; *Hildreth*, I, 285, 326, 386, 463; *Hubbard in Massachusetts Historical Collections*, 2d series, VI, 465-467; *J. Q. Adams in Massachusetts Historical Collections*, 3d series, IX, 189-223 (May, 1843). There is no account in *Winsor, Narrative and Critical History*, but a very good sketch in *Winsor, Memorial History of Boston*, I, 295-302. —BRIEF ACCOUNTS. *Story*, § 102; *Lodge, Colonies*, 381-385; *Lossing in Harper's*, vol. 25, pp. 627-634 (Oct., 1862); *Thwaites, Colonies*, §§ 64-67.

to aid in the King Philip Indian War. The commissioners made recommendation that the colonies support the feeble "College at Cambridge." The colonial legislatures sometimes threatened to secede. Massachusetts was by far the strongest member and browbeat the others, or declined to be bound by the constitutional three-fourths vote, and in 1653 put forward a strong statement of state sovereignty. The government of the Restoration in England looked with suspicion on the confederation. The commissioners met for the last time in September, 1684, as the storm of English interference was about to break over New England; the colonial charters were shortly after declared annulled; and when they were restored after the fall of James II. one of the members, Plymouth, had been absorbed by Massachusetts, and the union was never revived.

The chief service of the confederation had been to keep alive, through a time of hardship and danger, a feeling of interdependence and helpfulness; and to impress upon foreign neighbors, Dutch and French, the danger of meddling with any one of the colonies. In the form of government and the manner of carrying it on, we find abundance of good sense, but little federal spirit. Chiefly remarkable are the clauses for the return of fugitive slaves, and for the mutual execution of legal judgments, both forerunners of the Constitution of 1787.

§ 35. **Colonial unions (1690-1765).**<sup>1</sup>—Perhaps the idea of confederation might have gained, but for the coming on of the period of war with the French colonies. The British government now took the direction of affairs, and the colonies had less reason to confer on common matters. Nevertheless, between 1690 and 1754, there were numerous so-called "Congresses" of governors or representatives of colonies, to make joint treaties with the Indians, and to arrange for common military operations. The difficulty of bringing out the military strength of the colonies even in self-

<sup>1</sup> **Colonial unions.** BIBLIOGRAPHIES. *Foster, References*, II; *Winsor, Narrative and Critical*, V, 611-614; *Hart, Outline*, §§ 35, 36.—TEXTS. Only the Albany plan (1754) was very clearly formulated; it is in *Franklin*, I, 36, III, 22-68; *Preston, Documents*, 171-187.—HISTORICAL ACCOUNTS. There is no extended treatise on this subject. Information may be found *passim* in the historians of the Colonies.—BRIEF ACCOUNTS. *Frothingham, Rise of the Republic*, II, 12; *Lecky, England*, III, 279-300; *Draper, Civil War*, I, 253-265; *Curtis*, I, 3-10; *Wharton, Commentaries*, § 361; *Pomeroy*, § 47; *Winsor*, V, 611-614; *Bancroft, United States* (last revision), VI, 7, 8; *Lalor, Cyclopædia*, II, 1010, III, 992; *Lodge, Colonies*, 355-358; *Thwaites, Colonies*, c. xiii.

defence suggested to many royal officials in England and America that some central organization be formed. Such were the schemes of King William III (1796), and of Penn (1798), and of Governor Dinwiddie (1752). Just before the outbreak of the fourth war with the French colonies in 1754, a Congress of all the colonies was called at Albany, by direction of the home government, to make a general treaty with the Six Nations of Indians. Benjamin Franklin brought forward a detailed plan of union which was approved by the Congress; he suggested a representation and vote proportionate to the importance of each colony. With perhaps a few exceptions in Greek history, this was the first application of the principle to a federal government. Had the plan been adopted, it would have given to the federal authorities power over treaties, peace and war, trade, lands, and national finance. It was not acceptable either to the home government or to any colony.

Notwithstanding the advantages of the plan of 1754, the colonists were right in thinking that they would be more subject to interference under it than under separate, direct relations with the mother country. When, therefore, at the end of the long struggle with France, the British government endeavored to obtain from the colonies a partial support for permanent garrisons, the colonists flew to a union as a means of self-protection and of stronger protest. The Stamp Act Congress of 1765 had representatives from nine colonies: a government it was not in any sense; it simply stood forward as the voice of America to declare the proposed tax unlawful and unjust. The protest was heeded, and the colonies continued as before, without official and almost without social relations with each other.

§ 36. **Continental Congress (1774-1781)**<sup>1</sup> — The First Continental Congress, which met in June, 1774, was called in much the same spirit and behaved in much the same way. Of the seventeen

<sup>1</sup> **Continental Congress.** BIBLIOGRAPHIES of the Congress as a government. *Foster, References*, 11, 12; *Lalor, Cyclopædia*, I, 592; *Hart, Topical Outline*, § 37. — TEXTS. There was no written constitution during this period: the Declaration of Independence (1776), a statement of principles, is found in most of the collections, *post* § 469. HISTORICAL GEOGRAPHY. Maps of the Colonies at the time of separation, in *Thwaites, Colonies*, Map No. 5; *Lodge, Colonies*, frontispiece; *Scudder, United States*, 193, 207, 223; *MacCoun, Historical Geography*. — HISTORICAL ACCOUNTS. All the standard histories of the period, especially *Curtis, Constitution* (1861), I, 28-62; *Frothingham, Rise of the Republic*, 417-420, 428-439, 459, 460; 484-489; *Story, Commentaries*, §§ 203-205, 212-216; *Hildreth, United States*, III, 76-79, 87, 88; *Pitkin, United States*, c. viii-xi. —

continental British colonies, twelve were represented; but the people were now aroused: and, voicing the people, the Congress spoke more boldly, adopted an "association," or agreement not to import British goods, and provided for a similar meeting in the following year.

The Second Continental Congress met May 10, 1775, after months of increasing excitement, and with an expectation that it would take measures for the general good. A few days before it came together, war had broken out in Massachusetts. That colony must be abandoned to punishment, or the other colonies must take up her quarrel. A feeling of common interest and common danger hurried the members forward: there was no time to consult even the irregular bodies which had assumed the government of the colonies; there was no opportunity of getting sufficient colonial grants of men and money. The Congress was in session, and, in opposition to England, it brought about the union which the desire of England could not bring about twenty years earlier. The Continental Congress took upon itself the management of the military, financial, and foreign affairs of the thirteen colonies which united in the movement. A year later it took the logical step of proclaiming to the world the fact which had for months been existent—the independence of the colonies from Great Britain. In all these acts the colonies and the people acquiesced. An informal but effective confederation was thus formed.

During the five years following acquiescence was not always obtained, and the Congress went through the humiliations of a body unknown to constitutional law, and inadequately supplied with strength. But practically it was a true, though temporary government: it made treaties, issued legal tender notes, borrowed money, commissioned generals, directed campaigns. The practical and the legal inception of the Union is to be found in the acceptance by the people of the work of a body without a legal warrant, but nevertheless actually the government of all the thirteen States.<sup>1</sup>

§ 37. **The Confederation (1781–1788).**<sup>1</sup>—Congress itself could not fail to see that a permanent form of government ought to be

BRIEF ACCOUNTS. *Von Holst, Constitutional History*, I, 1–13, and *Constitutional Law*, § 2; *Pomeroy, Constitutional Law*, c. ii; *Lalor, Cyclopadia*, I, 589–592, II, 931, 932; *Kent, Commentaries*, I, 208.

<sup>1</sup> **The Confederation.** BIBLIOGRAPHIES. *Winsor*, VII, 233–236; *Foster, References*, 12–14; *Short, Reference Lists*, § 2; *Lalor*, I, 577; *Mead*, 26, 27; *Hart, Topical*

erected. Within about a year after its meeting, steps had been taken to organize a confederation. The war was in progress, and the first necessity was to provide military and foreign powers; but, while framing the Articles, provision was made for an indefinite after-time of peace. The Articles were submitted in 1778; but the ratification was delayed by the insistence of Maryland that the large States should cede to the Union their western territorial claims. It was a fortunate delay, for, in consequence of it, after the Articles were accepted by the thirteen States, and put into operation (March 1, 1781), the United States of America became possessed of a vast territorial domain; the administration and sale of this western land interested every State, and was one of the few permanent common interests.

The government thus established was a *Staatenbund*: to us it seems weak; when founded it was bound by the strongest federal ties then known. The Congress was a weak organ with all the functions of government; but it was in every way superior to the Swiss Diet, and, except in financial powers, to the States General of the Netherlands. The powers of government were few and feebly sustained; but they were larger than those of the Holy

*Outline*, §§ 44-74, especially §§ 44-48, 74; *Hart, Pamphlet for Use of Students* (1890), §§ 36<sup>a</sup>, 44<sup>b</sup>; notes to *Curtis, McMaster, Bancroft, Story, and Frothingham*. — TEXTS. In most of the collections enumerated *post* § 469; especially in *Hickey, Revised Statutes*, and *Manuals of House and Senate*. The only records of the proceedings except the *Journals* are *Madison's* notes in *Elliot, Debates*, V, 1-105, and *Madison, Papers*, I, 187-465, II, 581-614. — HISTORICAL GEOGRAPHY. See *ante* § 36, *post* § 469. — TREATISES. There is no formal work on the public law of the Confederation. Most of the treatises enumerated *post* § 469 have an introductory chapter or part on the subject, especially *Story, Commentaries*, §§ 218-271; briefer discussions in *Von Holst, Constitutional Law*, 7-15, and *Constitutional History*, I, 25-46. See also *Prince, Articles of Confederation vs. The Constitution* (1866); *J. F. Jameson, Essays on the Constitution* (1889), especially first three essays; *F. Thorpe*, in *Magazine of American History*, vol. 18, pp. 130-141 (Aug., 1887). — HISTORICAL ACCOUNTS. There are four elaborate accounts of the Confederation. Most valuable for constitutional purposes is *G. T. Curtis, History of the Constitution* (1858-60), I, 124-347, reprinted in his *Constitutional History* (1889), I, 1-256; *George Bancroft, History of the Constitution*, I, 1-267, reprinted in his *History of the United States*, last rev., VI, 5-194, and in *History of the Constitution*, student's ed.; *J. B. McMaster, History of the People of the United States*, I, 103-454 (1883); *J. Fiske, Critical Period of American History*, 1-186. Accounts less detailed may be found in the standard historians, especially *Pitkin*, I, 283-422, II, 1-223; *Hildreth*, III, 374-481; *Tucker*, I, 291-347; *Bryant and Gay*, IV, 75-100. Much may also be found in the biographies of Madison, Jefferson, Washington, Hamilton, Jay, and others. — BRIEF ACCOUNTS. *Winsor*, VII, 215-232; *Frothingham, Rise of the Republic*, 569-586; *Schouler*, I, 12-18; *Landon*, 46-62; *Lodge, Colonies*; many magazine articles.

Roman Empire. The nation found a Congress in existence, and as a Congress it was continued. The powers committed to it were, in the main, such as had previously been exercised by the Continental Congress, and such as the colonies had been accustomed to see carried on for them by the British Home Government. Even in its defects, the Confederation closely resembled its predecessor, the Continental Congress; it was a clumsy contrivance, so far as executive and judicial matters were concerned; and it had no direct relations with individuals.

It is a remarkable fact that three of the four strong existing federations have passed through a transition stage of weak federation, and out of the experiences of that period have developed a workable system. This was the case in America, as it was the case in Switzerland and Germany. Two promising attempts to amend the Articles failed for want of one vote to make the necessary unanimity. The vote by States threatened to bring about foreign treaties which would alienate part of the Union. The spectacle of a government borrowing money to pay interest on borrowed money, aroused the business men of the nation. The intolerable conflicts, complaints, and injurious legislation of the States among themselves led to a limitation of the powers of the States.

§ 38. **The Constitution (1787-1789).**<sup>1</sup>—As in the later North German Confederation of 1866, commercial interest was the cement of the Union. A succession of commercial conventions and of

<sup>1</sup> **The formation of the Constitution.** BIBLIOGRAPHIES. General bibliographies, *post* § 469, especially Winsor, VII, 255-257; Hart, *Topical Outline*, §§ 75-81, and *Pamphlet for the Use of Students* (1890), § 362; Ford, *Pamphlets on the Constitution*, 381-441.—TEXTS are very numerous: see *ante* § 33. The annotated texts of Porter in his *Outlines*, pp. 75-173, and of Paschall and Desty, are particularly useful. Official texts in the *Revised Statutes* and *Manuals of House and Senate*. The full text, analyzed and compared with other constitutions, is printed *post* Appendix A. The proceedings are elaborately reported in *Elliot, Debates*, I, V, and in *Madison Papers*.—HISTORICAL ACCOUNTS. The same general authorities as in the previous note: Curtis, *Constitution*, II, 232-604, reprinted in his *Constitutional History*, I, 257-697; Bancroft, *Constitution*, I, 267-278, II, 1-47, 114-350, reprinted in his *United States*, final rev., VI, 195-462, and *Constitution*, student's ed.; McMaster, I, 407-501; Fiske, *Critical Period*, 187-350. The principal general histories are: Pitkin, I, 218-291; Tucker, I, 347-383; Hildreth, III, 482-546; Schouler, I, 36-70. Story has a long account, *Commentaries*, §§ 272-372; Pomeroy, *Constitutional Law*, §§ 74-81; Von Holst, *Constitutional Law*, 15-32; *Constitutional History*, I, 47-63; Bryce, *American Commonwealth*, I, 12-34.—BRIEF ACCOUNTS. Frothingham, *Rise of the Republic*, 586-610; Winsor, VII, 236-255; Landon, 59-96; many articles in periodicals, especially at the centenary of the Federal Convention, 1889.



interstate conferences led to the calling of a federal convention in 1787. That body and the Constitution which it framed are the two most remarkable monuments of federal government: both were not inventions, but adaptations. That a constitution should be framed in detail by a body of uninstructed delegates, expressly chosen for that purpose, was familiar in the States of the Union; but was perhaps unexampled elsewhere in the world, and was certainly unexampled in the history of federations. That the instrument of federal government should provide for proportional representation in one house, and for a federal court, was a step in federal organization which marks a new federal principle. For many purposes the Union then created was stronger than the Prussian monarchy at that moment. In many respects the States were left stronger than the little nominally independent German principalities.

The great merit of the members of the convention is their understanding of the temper of their own countrymen. They selected out of English, or colonial, or State usages such practices and forms as experience had shown to be acceptable to the people. The two representative bodies forming the legislative department were not unlike the assemblies and councils of the colonies before the Revolution. The President was a more dignified and powerful State governor. The Supreme Court was but the highest State court adapted to national affairs, and possessing the appeal jurisdiction formerly exercised by the Privy Council in England.

The Convention had further the wisdom to express their work in general though carefully stated principles. All previous federal governments had been fettered either by an imperfect and inadequate statement, as in the constitution of the United Netherlands, or by an unwritten constitution with an accumulation of special precedents, as in the Holy Roman Empire. The phrases of the Constitution of 1787 were broad enough to cover cases unforeseen.

A third distinction of the federal Convention is the skill with which it framed acceptable compromises upon the three most difficult questions before it. The two Houses of Congress satisfied both large and small States; the three-fifths representation of slaves postponed an inevitable conflict; the allowance of the slave trade for a term of years made it possible for Congress to perfect commercial legislation.

The Convention had profited by the experience of the Confederation: on every page of the Constitution may be found clauses which would not have stood there had it been framed in 1781. An adequate revenue was provided; foreign and interstate commerce was put under the control of Congress; the charge of foreign affairs was given entirely to the central authority; the powers of government were distributed among three departments.

The work of the convention began May 29, 1787, and closed Sept. 17. Abandoning the old rule of unanimity, the vote of nine States was to put the new government into effect; by July, 1788, eleven States had ratified the Constitution. A few weeks later the old Congress expired for want of attendance, and there was a federal interregnum till the new government went into operation, April 30, 1789. Soon after, the two remaining States gave in their adhesion and perfected the Union.

§ 39. **Constitutional development (1789-1890).**<sup>1</sup>—When in 1789 the new government of the United States went into operation, there was nothing in the experience of America or of Europe to assure its friends that it would work successfully and stand per-

<sup>1</sup> **Constitutional development.** BIBLIOGRAPHIES. The general bibliographies, *post* § 469, especially *Foster, References to Presidential Administrations*; *Winsor*, VII, 260, 264; *Mead*, 37; *Foster, References to the Constitution*, 362; *Dareste*, II, 412; *Sumner, Jackson*, 388-391; *Andrews, Institutes of Constitutional History*, App. vii-x; *Dunning, Constitution* (1885); *Hart, Topical Outlines*; *Hart, Pamphlet for the Use of Students*, §§ 36, 44.—TEXTS. The only constitutional texts are the amendments to be found in the official and unofficial sources enumerated, *post* § 469. Important proclamations, ordinances, laws, and other documents may be found in *Niles, Register*; *Williams, Statesman's Manual*; *Preston, Documents*; *Cooper, American Politics*; *Putnam, Rebellion Record*; *McPherson, History of the Rebellion, History of Reconstruction*, and *Hand-Books* (biennial).—TREATISES. The more recent constitutional commentaries enumerated, *post* § 469, especially *Von Holst, Pomeroy, Bateman, Hare, Bryce, Cooley's Story, W. Wilson*; also the Confederate writers, *post* § 40, especially *J. Davis, Stephens, and Centz*.—HISTORICAL ACCOUNTS. The general constitutional histories enumerated, *post* § 469, especially *Curtis*, vol. II, when published; *Von Holst, Landon, Sterne, Blaine*; *First Century of the Republic* (1876); two volumes in the *Epochs of American History*, one now in preparation; *Hart, Revolution and Consolidation, 1750-1829*; and *Woodrow Wilson, Division and Reunion, 1829-1890*; *Thompson, United States as a Nation* (1877); *Willoughby, Notes on the Government*, in *Johns Hopkins University Studies*, 1890.—BRIEF ACCOUNTS. See *post* § 469, especially *J. Q. Adams, Jubilee of the Constitution*; *Miller, The Constitution*; *Baker, Federal Constitution*; and the articles by *McMaster, Phelps*, and *Johnston*; *Sterne, Constitutional History*, c. v; *W. A. Dunning, Constitution in Reconstruction*, in *Political Science Quarterly*, II, 558-602 (Dec., 1887). There may be added, *H. Reed, American Constitution in 1787 and 1866*, in *International Review*, II, 604-622 (Sept., 1875).

manently. Nevertheless it has so well fulfilled its purposes that during a century there have been but two series of significant changes of text. During the first few years of its existence the Constitution was most fortunately administered by those who had framed it, believed in it, and had the wisdom to apply it; men like Hamilton and Washington shaped a series of organizing acts which proved but little less important than the original text. Then came a period of nearly a quarter of a century (1793-1815), when the Republic was involved in foreign complications, including an annexation of territory larger than its original area, and ending in a war; the power over foreign affairs was thus consolidated. The next twenty years (1815-1835) was a time of great commercial growth, and public sentiment favored the application of national powers, both of creation and regulation. A bank was secured; internal improvements were applied; commercial treaties were negotiated; and the protective policy was initiated. Then came (1835-1860) a period of great effort to restrict federal powers, partly on principle, and partly lest those powers should be used against slavery. No federal government could exist, however, without coming into contact with an institution common to nearly half the States, and disliked by the other half: in destroying slavery, the Union was obliged to expand its powers of self-protection and enforcement. After the war ended in 1865, the obliteration of slavery was registered in the reconstruction amendments. But the disposition to use large federal powers did not cease. Custom and great material development united to urge the federal government to go to the verge of its powers. The nation had grown in territory and population, and the commercial questions which were put aside for the settlement of the slavery dispute have again come to the front.

The Constitution of 1789 has therefore undergone great changes, most of them in the direction of greater centralization. Amendments have rarely been necessary, because each generation has found the general principles laid down sufficient to give the government power to deal with new questions which come before it. The elasticity and flexibility of the Constitution have not only preserved the federation, but have introduced a new principle into federal government. A Constitution framed for four millions of people, grouped in thirteen thinly populated rural States, suffices for sixty-three millions, in forty-four rich States, abounding in

cities. The permanence of the United States is not due to the constructive skill of its founders; it rests upon the fact that the Constitution may, by the insensible effect of public opinion, slowly be expanded, within the forms of law, to a settlement of new questions as they arise.

§ 40. **The Confederate States of America.**<sup>1</sup>—Whether there is a distinct centralizing tendency in the Union is difficult to decide: federal legislation is dominant; but this may be the result simply of the rapid growth of the common objects over which the national legislature has power. The most important manifestation of such a tendency arose indirectly out of a struggle with an organized attempt to set up a weaker form of federation. In the Virginia and Kentucky resolutions of 1798–99, in the report of the

<sup>1</sup> **Confederate States of America.** BIBLIOGRAPHIES. Little has been written upon the Constitution of the Confederacy; still less upon its federal character. *Bartlett, Literature of the Rebellion*, is an unclassified catalogue of a specific library. *Sabin*, in his *Dictionary of American Bibliography*, Art. Confederate States, has assembled many titles. *John O. Sumner* in *Papers of the American Historical Association*, IV, 332–345 (Oct., 1890); brief bibliographies in *Lalor*, I, 71; *Hart, Outlines*, §§ 671–679.—TEXTS. Official, in Confederate Statutes at Large; also printed in *Stephens, War between the States*, II, 710–735; *J. Davis, Confederate Government*, I, 640–675, compared with United States Constitution; *Echoes from the South*, 45–71, 105–133, 154–156, 196–205; *American Annual Cyclopædia*, 1861, pp. 527–631; 1862, pp. 235–255, 256–274; 1863, pp. 203–219, 226–232; 1864, pp. 193–203, 206–218; 1865, pp. 187–203; *McPherson, Rebellion*, (*passim*; the book is made up mainly of texts); *British and Foreign State Papers*, vol. 55, particularly pp. 602–657, 658–706, 800–817, 817–837; also 412–451, 514–602, and 723–742; *Archives Diplomatiques*, II, 426–428; *Staatsarchiv*, IV, 239–335; *Hänel, Vertragsmässige Elemente*, 276–283, compared with the United States Constitution.—TREATISES. No systematic treatise is in existence. There is some discussion in *Davis* and *Stephens*, and *Centz, Republic of Republics*. *John O. Sumner* has in preparation a constitutional history of the Confederate States.—HISTORICAL ACCOUNTS. All the histories of the Confederacy neglect the constitutional development of the government. *J. Davis, Confederate Government*, especially I, 90, 300, 301; *Stephens, War between the States*, especially II, 312–396; *Pollard, Lost Cause*, 82–92, 95–99, 105–122; *Southern Historical Papers*, VII, 99, 333. There are several books on phases of the government, especially, *Jones, Rebel War Clerk's Diary*, *passim*; *J. D. Bulloch, Secret Service* (1884); *John Bigelow, France and the Confederate Navy* (1888).—BRIEF ACCOUNTS. *Centz, Republic of Republics*, 497–512; *Draper, Civil War*, I, 528–539; *Wilson, Slave Power*, III, 117–126; *Greeley, American Conflict*, I, 404–408; *Lalor*, I, 566–571, the best account in brief compass; *Jelinek*, 189–197; *Twiss*, § 45; *Greg, History of the United States*, II, 191–201; *Wheaton, Commentaries*, §§ 140, 141, 165, 217, 218, 228, 233, 374 n.; *Desty, Constitution*, 116, 117; *W. Wilson, Division and Reunion* (in preparation); *Fraser*, vol. 66, pp. 433–448 (Oct., 1862); *Galaxy*, vol. 6, pp. 749–758 (Oct., 1868); *Magazine of American History*, II, 259–265 (Sept., 1886), vol. 16, pp. 387–390; *Bankers' Magazine*, vol. 24, pp. 934–941, 1089–1095; the *Index*, published in London at the expense of the Confederacy.

Hartford Convention of 1814, in the Nullification proceedings of 1832, appears the principle that the federal Constitution is a compact to which the States had acceded, and from which they might, by a natural inference, secede. In 1860 the principle was asserted by the secession of several of the Southern States. That withdrawal had from the first been connected with a purpose to form a new Union. Most of the conditions of successful federation were present; the ruling element throughout the South had substantially the same race, language, religion, and political institutions. They had a very practical common purpose, the protection of slavery; and if the principle of secession, on which they had based their withdrawal, might later have divided them again, the immediate presence of a war practically united them most firmly. The Confederate States of America is, therefore, an example of a strong Bundesstaat.

There had been preliminary negotiations and understandings with other States before the secession of South Carolina, Dec. 20, 1860. On Jan. 7, 1861, the people of Alabama summoned the Southern States to meet in convention. The State conventions of six (later seven) States sent delegates, who met on Feb. 4, 1861, and proceeded at once to form a provisional government. It was based, in most respects, on the Constitution of the United States; but in two important particulars there was a temporary reversion to the methods of the Confederation of 1781: there was but one house, and the members from each State cast a collective vote. The government was not yet fairly in operation, when, in April, 1861, it was called upon to give orders relating to Fort Sumter, a fortification still held by the United States, within the limits claimed by one of the Confederate States. It directed an attack; and four other States preferred to secede and join the Southern Union, rather than to make resistance against the Confederacy.

In the hurry and excitement of the war, the provisional constitution was allowed to stand unaltered for a year. A more elaborate document was, however, drawn up, adopted by State conventions, and went into effect Feb. 18, 1862. The deviations from the Constitution of the United States were few: the only important powers struck out of the list of those exercised in Washington were the laying of protective tariffs and the appropriation of money for internal improvements. There were also some changes in the powers and relations of the Executive. The government was

never fully organized; the permanent Congress failed to pass the necessary law admitting Cabinet members to their deliberations; the Supreme Court was never constituted.

As in the North, the imperious pressure of the war drove the government to exercise all its powers, and even to go beyond them. The President had a great personal influence over Congress, which passed but one bill over his veto.<sup>1</sup> On the evacuation of the Capital, Richmond, at the approach of the Northern forces, April, 1865, the government was dispersed, and the confederation ceased to exist. Its acts have been decided by the United States courts to have no legal validity.

§ 41. **Switzerland.**<sup>2</sup>—With one brief and abnormal interruption, there has been a Swiss federation for five hundred and ninety-nine years. Switzerland possesses the only federal government which has come down from mediæval times to our own day. The roots of the present system are to be found in the old confederation;<sup>3</sup> but it has been much developed by the experience of the United States and by the changes in European government. Of all the confederations of history, Switzerland bears the closest resemblance in institutions to the United States. Both countries have republican states joined in a republican union; the division of powers between states and union is approximately the same; the judicial systems may be compared; the problems of federal relations between the states have received a like solution.

The population of Switzerland is divided among four languages, two religious confessions, and many races. But the conditions of the country during this century have been very favorable for federal growth; railways have united the formerly distant parts of the confederation; there has been a steady growth in national feeling. Situated in the middle of Europe, with the keys of the mountains in her hands, owing her independence rather to the mutual jealousies of her neighbors than to their friendliness for her, Switzerland must remain united in order to preserve her national existence. There has therefore been throughout this century a constant drift toward a stronger federal government. The Swiss Confederation and the United States have been the

<sup>1</sup> Harvard Historical Monographs, No. 1, Appendix C, No. 34.

<sup>2</sup> For references upon the general development of Switzerland as a federation, see Appendix C, § 470.

<sup>3</sup> *Ante* § 31.

two examples which have affected the formation of the German Empire; and in the successful application of the federal principle to new problems as they arise, Switzerland has contributed much to the growth of confidence in the permanence of federal governments.

§ 42. **The Helvetic Republic (1798-1802).**<sup>1</sup>—One of the reasons for the tenacious preference of the Swiss for a federal government, is their experience of a centralized system from 1798 to 1802. Under French influence there was set up the so-called "Helvetic Republic, one and indivisible." Those districts which had previously been in a dependent condition<sup>2</sup> were relieved and created into new cantons or incorporated with old ones. The cantons became mere administrative districts. Thus the old oligarchies were overthrown, and the democratic governments of the cities outweighed the people of the former rural cantons. The central government was organized on the plan of the French republic, with an executive directory, a legislature in two chambers, chosen indirectly, and a federal court. The fall of the Directory in Paris in 1800 was followed by the cessation of the new machinery in Switzerland. There was left a division into two parties, the Centralists and the Federalists. When the French troops were shrewdly withdrawn by the First Consul in 1802, civil war broke out. The French returned, in the interest of order, and Buonaparte was the only power capable of bringing the country out of a state of anarchy.

§ 43. **Act of Mediation (1803-1814).**<sup>3</sup>—A conference of deputies of both parties was summoned to meet at Paris, and a new constitution, the "Act of Mediation," was drawn up under the immediate influence of Buonaparte. The territorial changes made in 1798 were in part accepted, and six new cantons were thus added. Democratic constitutions were secured for the cities. The

<sup>1</sup> **Helvetic Republic.** BIBLIOGRAPHIES. See previous note.—TEXTS. See *post* §§ 461, 470; *Oechsli*.—TREATISES enumerated in the preceding note, among them: *Moses*, 81-35; *Dubs*, II, 37, 38; *Orelli*, 13-16.—HISTORICAL ACCOUNTS. *Tillier*, *Histoire de la République helvétique* (1846); *Mallet*, *History of the Destruction of the Helvetic Union and Liberty* (1799); *Hilty*, *Ueber die Helvetik* (1878); the histories enumerated in the preceding note.—BRIEF ACCOUNTS. *May*, *Democracy*, 378-385; *Calvo*, § 44; *Woolsey*, II, 210-212.

<sup>2</sup> *Ante* § 31.

<sup>3</sup> **Act of Mediation.** TEXTS. See *post* § 470; *Oechsli*.—TREATISES in § 470; *Orelli*, 16-19; *Moses*, 36-42. See also references in preceding note.

Diet was reconstituted in one house, much as it was before 1798; but in some respects the government took on more of a federal character. The head of one of the chief cantons each year was also Landamann, a federal executive officer resembling the French consul. Internal commerce was relieved of many impediments, and war, peace, and foreign affairs were definitely placed in the hands of the Diet.

When once the constitution had been formulated for the Swiss, they were allowed to carry it out in their own way, but still subject to an undefined French protectorate. Although Switzerland enjoyed immunity from military occupation during the fierce wars of the next eleven years, and was peaceful and prosperous under the Act of Mediation, it was felt to be the work of a foreigner and a master. When in 1813 Napoleon was pressed back beyond the Rhine, the constitution fell.

§ 44. **Constitution of 1815 (1815-1848).**<sup>1</sup>—The readjustment of Europe proved very favorable to the Swiss. The Allies took the country under their special protection, and in the settlement at Vienna in 1815 was inserted an elaborate constitution for Switzerland. The party favorable to a return to the conditions before 1797 was disregarded; on the other hand, the democratic cantons prevailed in their opposition to a strong confederation. The Allies offered the Swiss a guaranty of their neutrality if they would accept the proposed constitution; and three small neighboring states were incorporated into the union.

The system thus established was not very different from that of the old confederation before 1798. Even the weak executive of the Act of Mediation was swept away; the Diet was the only central authority, and in it the cantons had each an equal and

<sup>1</sup> **Constitution of 1815.** BIBLIOGRAPHIES. *Brie, Bundesstaat*, 61-71.—TEXTS. See post § 470; *British and Foreign State Papers*, III, 803-812 (in French); *De Marten et de Cussy*, III, 14, 38, 89, 197, 242; *Martens, Nouvelle Recueil*, III, 68, IV, 159, 174, 244; *Pöhlitz, Map of Europe by Treaty*, I, 64-71; *Oechsli*.—TREATISES AND ACCOUNTS. See post § 470; *Grote, Seven Letters* (1876); *Esseiva, Fribourg et le Sonderbund* (1882); *Circourt in Revue des deux Mondes*, vol. 17, pp. 1030-1088 (March 15, 1847); *Cretineau-Joly, Histoire du Sonderbund* (1850); *Bluntschli, Geschichte*, 494-502; *Vuillemin*, II, 326-392; *Morin*, II, 80-314.—BRIEF ACCOUNTS. *De Peyster, Secession in Switzerland and in the United States Compared* (1863); *Moses*, 43-54; *Dubs, Recht*, II, 38, 39, 43, 44, 52, 53, 64, 65, 75-78; *Orelli*, § 4; *Twiss*, §§ 50-52; *Phillimore*, §§ 113-117, 134 n.; *Calvo*, § 44; *Woolsey*, II, 213, 214; *Droz*, § 131; *May*, 385-392; *Adams and Cunningham*, 15-19.



instructed vote. But the incorporation of subject lands, the abolition of politically privileged classes, and the principle of free internal intercourse, were now too deeply rooted to be disturbed. There was a new spirit of union, and old obstacles to federal development were removed.

Nevertheless the government did not accord with the new political conditions of the country. The political struggle was simply transferred to the cantons; and during the next thirty years most of the cantonal constitutions were made more liberal. The Revolution of 1830, in France, suggested a similar movement in Switzerland, but it took the form of a movement for the revision of the articles through constitutional forms. In 1832 an excellent series of amendments was proposed, but failed of adoption. In the same year was formed the first of the *Sonderbünde*, or separate confederations; it attempted rebellion, but was forced by show of arms to return to allegiance. A similar *Sonderbund*, formed out of Catholic cantons in 1845, led to a brief but decisive civil war in 1847. The federal arms were victorious, and the national spirit was aroused to the necessity of adopting a new constitution.

§ 45. **Constitution of 1848 (1848-1874).**<sup>1</sup>—The return of the members from the *Sonderbund* to the Diet in 1848 was followed by the preparation of a new constitution, the first since 1797 formed without outside influence. It was framed by a committee, developed by the Diet, and ratified by a vote of fifteen and one-half cantons to six and one-half. Under it for the first time Switzerland became a *Bundesstaat*. The influence of the experience of the United States is shown throughout; but the details are worked out to suit the conditions of the time and country. The American system of two houses, one representing states, and the other the people, was adopted. A distrust of executive power vested in

<sup>1</sup> **Constitution of 1848.** BIBLIOGRAPHIES. *Dubs*, *Droit*, 62, 63; *Calvo*, § 57.—TEXTS. *British and Foreign State Papers*, vol. 47, p. 1245; *Staatsarchiv*, vol. 26, pp. 219-270 (compared with the Constitution of 1874); *Laferrière et Batbie*, 84-119; *Ghillany und Schnitzler*, *Manuel Diplomatique*, II, 385. See also collections *post* §§ 462, 470.—TREATISES. The constitutional treatises published before 1874. *Lagenevais*, *La Suisse depuis la Révolution de Février* (1850); *Block*, *Dictionnaire de la Politique*, Art. Suisse.—ACCOUNTS. In the histories enumerated *post* § 470.—BRIEF ACCOUNTS. *Moses*, 54-56; *Woolsey*, II, 214-220; *Adams and Cunningham*, 20-22; *Twiss*, §§ 52, 53; *Calvo*, §§ 45, 56, 57; *Droz*, §§ 132, 133; *Daresté*, I, 441; *Zschokke* (*Shaw's translation*), 387-394; *Lawrence's Wheaton*, note 44; *Dana's Wheaton*, note 33; *Freeman*, *Presidential Government* (see *post* § 470).

a single head caused the substitution of an executive board of seven for the President of the United States. There was, however, no federal court. The powers of the federal government were broadened.

During the twenty-four years following the adoption of this constitution Switzerland enjoyed singular peace and prosperity. The five European wars between 1855 and 1871 did not disturb the neutrality of the country, though in four of them military operations would have been made easier by marching across her territory. But the success of the United States in crushing the rebellion against its authority in 1865, and the formation of the North German Alliance in 1867, suggested a further strengthening of the Swiss constitution. In 1872 a project of amendment was submitted, which conferred upon the general government many additional powers, including that of framing the civil and criminal law. By a narrow popular, and a decisive cantonal, majority, it was rejected; but there was evidence that a less sweeping change might be accepted.

§ 46. **Revision of 1874 (1874-1890).**<sup>1</sup>—The agitation for amendment of the constitution at once began again; as before, it took the form of a revision of the existing articles, rather than a recasting of the whole framework of government. The plan of 1872 was again submitted with such alterations as made it more acceptable to the weaker cantons; and it secured a very large popular majority, and fourteen and one-half cantons to seven and one-half. The changes gave wider powers of legislation and supervision to the confederation, and established a permanent capital, and a

<sup>1</sup> **Constitution of 1874.** BIBLIOGRAPHIES. See *post* § 470.—TEXTS. German: *Sammlung der Verfassungen* (1880), *Staatsarchiv*, vol. 22, No. 4649, vol. 26, No. 5177 (compared with 1848); *Oechli, Quellenbuch; Amtliche Sammlung der Bundesgesetze*. French: *Annuaire de la Legislation Etrangère*, IV, 445-477 (with comments); *Morin, Précis*, V, 331; *Recueil* (1880); *Daresté*, I, 441-468; *Droz, Instruction Civique*; also in many treatises. English translation by E. J. James in *Publications of the University of Pennsylvania, Political Economy and Public Law Series*, No. 8 (1890); translation by Albert Bushnell Hart in *Old South Leaflets, General Series*, No. 18 (1890). Spanish: *Moreno, Instituciones políticas* (1881). The text will be found complete, in analyzed form, in Appendix A of this monograph.—TREATISES. Principal publications since 1874, especially *Dubs, Orelli, Moses, Adams and Cunningham, Winchester; Procès-Verbaux des Délibérations*, 1873-74 (1877).—ACCOUNTS. Latter part of the most recent histories, especially *Morin* and *Dändliker* (*post* § 470).—BRIEF ACCOUNTS. *May, Democracy*, Eng. ed., I, 392-405; *Woolsey*, II, 220-223; *Dacey, Law of the Constitution*, 154-157; many articles in periodicals.

federal court, which in matters of civil and criminal law is not unlike the Supreme Court of the United States.

No further important changes have been made ; the few amendments do not alter the spirit of the constitution. The country has enjoyed perfect external and internal peace, except for disturbances within some of the cantons. The questions debated are chiefly social, and are based less on the question of what powers may be exercised by the confederation than on the question how far it is prudent to exercise the powers granted. In one direction only does the federal power seem still insufficient : military men assert that the safety of the country demands a more complete control of the federal army. Unless a war should come, there seems no reason to expect any fundamental change in the Swiss constitution. It could not be much more highly centralized without destroying the autonomy of the states.

§ 47. **Germany.**<sup>1</sup>— That the Holy Roman Empire,<sup>2</sup> during the last two centuries of its existence, could not have a strong or a national government lay in the nature of things. The imperial dignity was in the possession of Austria, a power having great interests outside the Empire. The form of government was hopelessly complicated. The little states took on the despotic form of their powerful neighbors. Cities, as political centres, lost relative importance as great states grew. When Prussia, in the middle of the eighteenth century, came forward as a rival of Austria, it was plain that no federation could exist with two unfriendly members, each stronger than all the smaller German states combined. The liberalizing spirit of the French Revolution was a shock to the governments of the little states, and broke up the existing artificial combination. The process of decay destroyed two of the great obstacles to the union of the German people : the little states were forced into larger units ; and the crushing weight of the French occupation of Prussia and of the western states taught the Germans that a sacrifice of local powers to a German centre capable of protecting them was better than the destruction of the small states by a foreign conqueror.

For a time the western third of the Empire was absorbed or controlled by France ; after it was freed, the rivalry between Aus-

<sup>1</sup> For references upon the general development of Germany as a federation, see *post* Appendix C, § 471.

<sup>2</sup> *Ante* § 30.

tria and Prussia remained; and the history of the formation of the German Empire is a history of the process by which Prussia, by this time more German than Austria, took the hegemony, enlarged her borders, and gathered the smaller states about her.

§ 48. **Confederation of the Rhine (1806-1813).**<sup>1</sup>—When the Empire was finally dissolved in 1806,<sup>2</sup> it had already practically ceased to exist. The French Republic had wrested away parts of Western Germany; the First Consul after the campaign of 1803, added other portions; and the Reichsdeputationshauptschluss of 1803 “mediatized” and “secularized” many petty states. In 1806 Prussia was overrun by the Emperor of the French, and he refused longer to acknowledge the existence of a German Empire. The newly enlarged states in the west looked to the conqueror for an assurance of their territory, and seventy-two little states which had survived the crisis of 1803 were now incorporated with their neighbors. Napoleon created the Kingdoms of Saxony, Bavaria, and Würtemberg. The two latter states, with Baden, and thirteen others, by a treaty framed at Paris, constituted themselves (July 17, 1806) a “Confederation of the Rhine.” Eventually thirty-nine members in all were admitted. The confederation had an area of sixty thousand square miles, and fifteen million inhabitants.

The Confederation of the Rhine can scarcely be said to have had any political or constitutional history. The Diet was of two “colleges,” but neither was ever summoned. The head of the federal state was the “Protector,” Napoleon. His protection consisted in an arbitrary supervision of each state. A part of the confederate

<sup>1</sup> **Confederation of the Rhine.** BIBLIOGRAPHIES. See previous note; *Schulze, Staatsrecht*, § 39; *von Brie*, 32-41.—TEXT. *Klüber, Staatsrecht*; *Meyer, Corpus Juris Confederationis Germanicæ*; *Garden, Traités de Paix*, IX, 142-284.—HISTORICAL GEOGRAPHY. *Droysen, Atlas*, Plate 49; *Fyffe, Modern Europe*, I, 434; *Ausant, Atlas Historique*, Plate 35.—TREATISES. *Zachariä, Jus publicum civitatum quæ foederi Rheno adscriptæ sunt* (1804); *Behr, Systematische Darstellung des rheinischen Bundes* (1808); *Klüber, Staatsrecht des Rheinbundes* (1808). See general treatises *post* § 471.—HISTORICAL ACCOUNTS. *Politische Zustände zur Zeit der französischen Herrschaft* (1862-69); *Rimbaud, Domination française en Allemagne* (1873); *Bülow, Geschichte Deutschlands von 1806-1830* (1842); see general accounts *post* § 471; *Häusser, Deutsche Geschichte* (1859-60), II, 577-590; *Mrs. Austin*.—BRIEF ACCOUNTS. Introductions to the treatises, especially *Schulze*, §§ 38-42; *Fyffe*, I, 303-306; *Grant Duff, Studies in European Politics*, 252-254; *Bluntschli, Staatswörterbuch*; *Welcker, Staatslexikon*; *Brockhaus, Conversationslexikon*; *Meyer, Conversationslexikon*, Art. Rheinbund; *Block, Dictionnaire de la Politique*, Art. Confédération du Rhin.

<sup>2</sup> *Ante* § 30.

territory was organized into the ephemeral Kingdom of Westphalia; a part was annexed to France. The larger members so felt their dependence on France that for the campaign of 1812 Bavaria furnished more troops than the dictator had required; and the grand army which invaded Russia had an enormous German contingent. When, in 1813, Napoleon was driven across the Rhine, the semblance of a confederation fell to pieces, without a formal notice of dissolution.

It cannot be said that the Confederation of the Rhine accustomed its members to act together, but it had a great influence in breaking down the old boundaries; and the new states, formed under French influence, were obliged to yield to their subjects larger personal rights and even some direct share in the government.

§ 49. **The German Confederation (1815-1866).**<sup>1</sup>—At the overthrow of Napoleon, in 1813-15, the Allies attempted to return, so far as possible, to the conditions before 1789; and a German union was formed, which was intended to be like the old Empire. The changes in Germany, and particularly the territorial changes, had, however, gone too far to be entirely reversed. As the price of abandonment of Napoleon, the South German states asked and obtained a guaranty of their possessions; and the liberal tendencies in the western states could not be altogether suppressed. The title of German Emperor could not again be conceded to Austria, nor would either that power or Prussia endure a strong or perma-

<sup>1</sup> **German Confederation.** BIBLIOGRAPHIES: Treatises, *post* § 471, especially *Schulze, Lehrbuch*, § 43-64; *Lawrence's Wheaton*, note 38. — HISTORICAL GEOGRAPHY. *Droysen, Atlas*, Plate 50; *Rhode, Schul-Atlas*, Plate xvii B; *Ausant, Atlas Historique*, (1838), *Cartes Modernes* 2. — TEXTS. *De Martin et Cussy*, III, 81, 146, 463; *Angeberg*, II, 1372-1385, 1789-1800; *Hertslet*, I, No. 26, p. 636; *British and Foreign State Papers*, II, 114-136; *Archives Diplomatiques*, 1867, III, 1004. See general texts *post* §§ 462, 471; *Klüber, Akten des Wiener Congresses* (1816). — TREATISES. *Post* § 471, especially *Zachariä, Staats- und Bundesrecht; Zöpf, Grundsätze; O. Mejer, Einleitung*. — HISTORICAL ACCOUNTS. In many of the treatises *post* § 471; in the general accounts *post* § 471, especially *Häusser, Treitschke, Kallenborn; Wheaton, History of the Law of Nations*, 455-483; *Malet, Overthrow of the German Confederation*, pp. xv-xxiv; *Nicolson*, 1-69; *Fyffe, Modern Europe*, III, c. ii, v. — BRIEF ACCOUNTS. *Schulze*, §§ 53-68; *Grant Duff, Studies*, 252-288. The treatises, especially *Bluntschli, Staatswörterbuch; Welcker, Staatslexikon; Woolsey, Political Science*, II, 197-202; *Calvo*, §§ 51, 52; *Wheaton*, Part I, c. ii, § 23; *Lawrence's Wheaton*, notes 32-38; *Dana's Wheaton*, notes 29, 30; *Bryce, Holy Roman Empire*, 419-429. — BEST BRIEF ACCOUNTS. Selections from *Schulze, Zachariä, Zöpf, Malet, Bryce, Lawrence's Wheaton, Nicolson*.

nent executive, although Austria received the honorary Presidium. Above all, Prussia was deprived of her former Polish provinces, and received, as compensation, detached German territory west of the Rhine, and supposed to be Gallicized in sentiment.

The triple division of interest was thus restored: Prussia, Austria, and the third portion of Germany were united by a tie which must inevitably lead to war. The constitution drawn up, like that of Switzerland, in the Congress of Vienna, made Germany a weak Staatenbund. The Diet was substantially a Congress of ambassadors, in which for important matters unanimity was required. As in the United Netherlands, unanimity could be secured only by a pressure from the greater states. The confederation, therefore, never did anything useful: it made no war and closed no peace; it provided no federal judiciary. On the other hand, it interfered with the internal government of small states suspected of liberalism. In 1848 there came a great crisis in German affairs. Popular revolutions threw into confusion not only the small states, but Prussia and Austria. An imposing body met at Frankfort to frame a new constitution for Germany. It sat a year; a scheme of union was framed, and the King of Prussia was chosen Emperor. But Prussia declined; she had not the military organization necessary to take the lead against Austria, and the ardor of the Revolution had ceased. The golden opportunity was past; after a two-years interregnum the federal Diet resumed its sittings. The chief result of the movement was a series of new and more liberal constitutions, especially in Prussia, and the precedent of union under Prussian hegemony.

During the next fifteen years the confederation as such had no influence in Europe; but Prussia was preparing for the inevitable struggle. Bismarck proposed a plan of union in 1862. In 1864 the Schleswig-Holstein question almost caused a breach between Austria and Prussia: it was adjusted for the moment. But it was evident that either Prussia or Austria must give up her influence on Germany. In 1866 both parties were ready, and the quarrel broke out over the old question of Schleswig-Holstein. Prussia declared herself free from the confederation; Austria secured a vote authorizing her, in the name of the confederation, to reduce Prussia to obedience to her federal obligations. The small states divided into adherents of one or the other of the belligerents.

§ 50. **Zollverein (1834-1871).**<sup>1</sup>—Up to 1866 Austria had in diplomacy and in military prestige on the whole outweighed Prussia; but for many years Prussia had been cementing a bond of commercial union which was effectual in stimulating a feeling of common German interests, and which was to take the place of the Confederation of 1815, as the foundation of a new German Empire. In 1815 Prussia had urged that customs tariffs be made a subject of federal legislation. Overruled in this project, in 1818 a Prussian law abrogated all internal tariffs within the kingdom, and, for the first time, made the commercial and political boundaries conterminous. The next step was to persuade her neighbors possessing “enclaves”—districts enclosed within Prussian territory—by treaty to place these districts under the Prussian system. By 1828 a territory tolerably compact was thus brought under one customs system. The next step was to induce her neighbors to join in the common system; and the Prussian law had been drawn in a manner to make its acceptance by other states easy. It was agreed that the proceeds of the common customs were to be divided in proportion to the respective populations of the signatory powers. The Grand Duchy of Hesse was the first to come into this arrangement, in 1828. Bavaria and Würtemberg formed a separate union of the same kind. Hanover and the countries lying between Prussia and the South German States

<sup>1</sup> **Zollverein.** BIBLIOGRAPHIES. The literature is almost wholly in German: it may be found through the German treatises *ante* § 47, especially *Thudichum; Dunbar, Topics*.—TEXTS. See general collection *ante* § 47, *post* § 362. *Hertslet Kolber, Archiv des norddeutschen Bundes und des Zollvereins; Staatsarchiv; Archives Diplomatiques*, IV, 220, 269.—HISTORICAL GEOGRAPHY. *Droysen, Atlas*, Plates 51, 59; *Sohr und Handtke, Universal Hand-Atlas* (5 Aufl. 1854), Plate 10; *Spruner-Menke*, Plate 49.—TREATISES. See *ante* § 47, especially *Thudichum, Verfassungsrecht des norddeutschen Bundes und des deutschen Zollvereins* (1870); *Schulze, Einleitung* (1867); *Meyer, Verwaltungsrecht; Meyer, Lehrbuch* (1878), §§ 58-66; *Laband*, III, 242; *Delbrück, Der Artikel 40 der Reichsverfassung* (1881); *Fischer in Jahrbuch der Nationalökonomie und Statistik*, II, 317, 397, VI, 225; *H. Richelot, L'Association Douanière allemande* (1859).—HISTORICAL ACCOUNTS. *Falke, Geschichte des deutschen Zollvereins* (1869); *Aegidi, Aus der Vorzeit des Zollvereins* (1865); *Packisch, Geschichte des Zollvereins* (1869); *Weber, Der deutsche Zollverein* (1869); *E. Worms, L'Allemagne économique* (1874); *Von Kaufmann, Étude sur l'Association douanière* (1880); in the standard histories *post* § 471.—BRIEF ACCOUNTS. *Treitschke in Preussisches Jahrbuch*, xxx, 397, 479; *Bluntschli, Staatwörterbuch*, xi, 1050; *Holtzendorff, Rechtslexikon*, III, 1441; *Hirth, Annalen*, 1888, p. 609.—Much may be found in periodicals, especially the German; see *ante* § 47. *Brockhaus, Konversationslexikon; Meyer, Konversationslexikon*, Art. Zollverein.

formed a counter-union; but the magnetic attraction of the larger power drew away members; and the Prussian-Hessian combination secured the adhesion of the South German States.

On Jan. 1, 1834, under a new general treaty, the combination of states took the name of *Deutscher Zoll- und Handelsverein*. The basis of the treaty was the original Prussian-Hessian agreement: no import, export, or transit duties between members; the proceeds of customs to be divided among the states according to population; alterations of the tariff as established to be made only by general consent; an annual congress of ambassadors to consider the affairs of the union. The principles thus laid down, as well as the rate and administration of the tariff, were thus fixed, and the other states, as they came in, were obliged to accept them as they found them. Gradually most of the German States, except Austria, came in. The crisis of 1848 strengthened the Zollverein as the only practical expression of German unity. In 1853, and again in 1865, the treaty of 1834 was substantially reaffirmed. The active headship of Prussia was a constant unifying influence.

The war of 1866 added a political basis of union. When peace was proclaimed in 1867, the Zollverein was continued, but on a larger scale. It was made eventually an adjunct of the new North German Confederation; all the states which formed that Confederation agreed to accept uniform federal legislation on tariffs. By treaty with the North German Confederation, the South German States adhered to its tariffs and sent delegates to the Zollbundesrath and Zollparlament, the two houses of the Zollverein, which existed side by side with the federal government. When, in 1871, these states accepted the Imperial constitution, they accepted the commercial powers of the Empire, and the Zollverein ceased to exist, because its work was perpetuated by a stronger union.

§ 51. **North German Confederation (1866-1870).**<sup>1</sup>—The war of 1866 was the final struggle for supremacy over the third part of

<sup>1</sup> **North German Confederation.** BIBLIOGRAPHIES in the treatises *post* § 471, especially *Schulze, Lehrbuch*, §§ 66-75, and *Einleitung*, §§ 125-149; *Calvo*, § 54.—TEXTS. *Staatsarchiv*, vol. 12, No. 2729, vol. 13, No. 2743; in many treatises and separate editions; *Schulze, Einleitung*, 475-492; *Glaser, Archiv: Bezold, Materialien; Archives Diplomatiques* (1868), I, 15-32; *La Ferrière et Batbie*, 120-157; *Annuaire des Deux Mondes*, 1866, 1867, §§ 368-394; *British and Foreign State Papers*, vol. 57, 296-313; *Hertslet*, III, 1807-1828.—HISTORICAL GEOGRAPHY. *Freeman, Historical Geogra-*



the Holy Roman Empire. With Prussia were allied most of the smaller states of North Germany; with Austria were allied two of the three large South German states, and Hanover. The Prussian arms were victorious, both in the east against Austria and in the west against the Germans. By the terms of the Peace of Prague (Aug. 23, 1866), Austria agreed to withdraw from all political connection with the German states. The political sagacity of Bismarck prevented Prussia from exacting any of the territory of Austria, and from severe measures against most of the defeated South German states. Hanover, however, fell a victim to the unwise shrewdness of the diplomats of 1815; she lay between the two areas of Prussian territory, and was incorporated to make the bridge necessary to unite them.

Although Prussia had now the undisputed hegemony of Germany, she exercised her influence to create a union attractive to the smaller states. By treaty with her allies at the beginning of the war, she agreed to a new federal union. After the war, the details were settled by the first Diet of the newly constituted North German Confederation, and were accepted by the twenty-one states composing the union. The constitution was proclaimed July 1, 1867. The fundamental changes from the constitution of 1815 were: the creation of a Presidium, vested in the crown of Prussia; a generous provision of sovereign powers given to the union; and the establishment, as a component part of the government, of a Diet, chosen by manhood suffrage throughout the union. The South German states were to be allowed admission whenever they might desire. By secret treaties these states entered into an offensive and defensive alliance with the Confederation, and the Zollverein was extended over their territory.

*phy of Europe*, I, 228, 229; standard atlases published between 1867 and 1871.—TREATISES. The German treatises published between 1867 and 1871, *ante* § 47, especially Meyer, *Grundzüge*; Hiersemann, *Verfassungsrecht*; Thudichum, *Verfassungsrecht* and Schulze, *Einleitung*, §§ 125-149; Münster, *Der norddeutsche Bund und dessen Uebergang* (1868).—HISTORICAL ACCOUNTS. General references, *post* § 471, especially Müller, *Klüpfel*, Treitschke, von Sybel; chapters in later treatises, especially Schulze, *Lehrbuch*, §§ 69-73; Ghillany, *Diplomatisches Handbuch* ( ), Introduction; Nicolson, *German Constitution*, 71-74; Malet, *Overthrow of the Germanic Confederation* (1870); Menzel, *Der deutsche Krieg im Jahre 1866* (1867); Cherbuliez, *L'Allemagne politique depuis la Paix de Prague* (1870); Hahn, *Der Krieg Deutschlands gegen Frankreich. Die Deutsche Politik, 1867-1871* (1876); Charles Lowe, *Prince Bismarck* (1885), ch. vi-viii.—BRIEF ACCOUNTS. Bryce, *Holy Roman Empire*, 429-445; Calvo, §§ 52-54; Lawrence's *Wheaton*, II, 176; Woolsey, *Political Science*, I, 202-204.

§ 52. **Formation of the German Empire (1870-1890).**<sup>1</sup> — The North German Confederation was plainly only a transition stage; the southern states could no longer lean upon Austria, and feared to lean upon France. By skilful diplomacy Bismarck held back till Napoleon III had made an aggressive movement, and all Germany was swept into a war, first of defence and then of conquest. The arms of the South German States co-operated in a military union; the governments were compelled by the force of circumstances to agree to a political union. One after another, in November and December, 1870, they agreed by treaty to join the Confederation. Here again the matchless skill of Bismarck had already prepared the way. As the constitution stood, these states could be admitted by a single resolution, but they were obliged to accept the constitution without amendment; they secured only a few unimportant exceptional privileges by their treaties of entrance. In January, 1871, the process was completed.

<sup>1</sup> **The German Empire.** BIBLIOGRAPHIES. List of treatises and histories *post* § 471; foot-notes to the treatises, especially *Schulze's Lehrbuch*, *Laband*, *Meyer's Staatsrecht* and *Verwaltungsrecht*; *Schulze*, *Bibliographie de la Guerre franco-allemande 1871-1885* (1886). — TEXTS. German: critical editions of *Riedel* (1871); *Martin* (1871); *Seydel* (1873); *Koller* (1875); *Die Verfassungsurkunde* (1878); *von Könne*, 4 Aufl. (1882); *Stoerk* (1884); *Zander*. Many official editions: *Staatsarchiv*; *Bezold*, *Materialien*. — French: *Annuaire de Législation Etrangère*, I, 234-236, with notes; *Archives Diplomatiques*, 1873, I, 108-128; *Dareste*, I, 133-159. — English: *Hertslet*, III, 1930-1952; *British and Foreign State Papers*, vol. 61, pp. 58-76; *Lowe*, *Life of Bismarck*, II, App. F; *George Bancroft*, in *Papers relating to the Foreign Relations of the United States*, 1871, pp. 363-393; a partial translation in *Government Year Book*, 1889; *E. J. James*' translation in *Publications of the University of Pennsylvania, Political Science, and Public Law Series*, No. 7 (1890); the complete text is presented in classified form, *post* Appendix A. — HISTORICAL GEOGRAPHY. *Hertslet*, III, 1976; *Freeman*, *Historical Geography*, I, 219, 229-231, II, Plate xxxi; *Droysen*, *Historischer Hand-Atlas*; *Andree*, *Hand-Atlas*; *Stieler*, *Hand-Atlas*; *Neumann*, *Atlas zum Geographischen Lexikon*, special map of the German Empire. — TREATISES. The treatises on the German constitution published since 1871, *post* § 471, especially *Mohl*; *Hänel*; *Könne*; *Laband*, four-volume and single-volume editions; *Zorn*; *Schulze*; *Meyer*, *Staatsrecht* and *Verwaltungsrecht*; *A. Lebou*, *Études sur l'Allemagne politique* (1890). — HISTORICAL ACCOUNTS. General references, *post* § 471, especially *Müller*, *Treitschke*, *Biedermann*, *Jastrow*, *von Sybel*, *Nicolson*, *Baring-Gould*, *Fyffe*, *Arndt*; *Treitschke*, *Zehn Jahre deutscher Kämpfe* (1879); *Simon*, *L'Empereur Guillaume et son Règne*, 2 ed. (1881), English translation (1886); *Lowe*, *Prince Bismarck* (1885), ch. x-xiv. — BRIEF ACCOUNTS. *Schulze*, *Lehrbuch*, § 76-79; *Woolsey*, *Political Science*, II, 204-208; *Calvo*, §§ 51, 72; *Bryce*, *Holy Roman Empire*, 7 ed. (1877), 400-445; *Tuttle* in *Harper's*, vol. 63, p. 691 (Sept., 1881); *J. W. Burgess* in *Political Science Quarterly*, III, 123-135 (Mar., 1888); *Geffcken* in *Contemporary Review*, vol. 49, pp. 280-294 (Feb., 1886), vol. 50, pp. 277-294 (Aug., 1886), vol. 51, pp. 586-601 (Apr., 1887), vol. 52, pp. 880-894 (Dec., 1887).

As almost all the German-speaking states were now included, it seemed fitting to resume the name of Empire; and on Jan. 18, 1871, King William of Prussia was declared German Emperor, in the Palace of Versailles.

A few changes of phraseology only were necessary. The four South German States made up the number of twenty-five members. Since 1871 the Empire has continued, powerful in diplomacy, a bulwark against invasion, and a successful federal government. In form the Empire is rather weaker than the United States; the second chamber has both executive and legislative functions, and is made up of instructed ambassadors; the federal judiciary is weak and still undeveloped; and the preponderance of Prussia throws upon the union a strain from which the other federal governments are free. In powers, however, the German Empire is well endowed; it has unusual control of commerce and of means of transportation. Many of its powers it has as yet forborne to exercise; the execution of national powers is still left in many respects to the states; and there is throughout an interdependence of national and state officials which is in contrast to the American system of absolute separation. The union is a strong one, and the great danger, an attempt to centralize and Prussianize the union, has been averted by the moderation of the leading state. Considering the history of Germany, a further degree of centralization seems unlikely.

§ 53. *Canada*.<sup>1</sup>—Unlike the three other great confederations, Canada has had no federal history previous to the formation of the present union; the traditions of the country have been alien to the idea of federation, and the members of the Dominion had little common history. The colony of which the name has been applied to the whole union was for a century and a half under a thoroughly centralized provincial government, directed from France. It was in 1791 divided by the British authorities into two colonies, but they were re-united in 1840. Jealousies between the two sections of the combined colony, the natural growth of the country, the development and insecurity of the interior, suggested a federation; and the possibility of railroad connections with the maritime provinces in the east, and with the Pacific on the west, and the danger of absorption by the United States, led to a scheme

<sup>1</sup> For references to Canada as a federation, see Appendix C, § 472.

of union. The first detailed proposition was that of Nova Scotia, in 1864, for a union of the maritime provinces only. As in the case of the Annapolis Convention of 1786, the meeting called to consider the matter proposed a federation; and a general convention was called in 1864, and drew up a series of resolutions, embodying a federal government. Three provinces agreeing, the plan of union was submitted to the British Parliament in 1867, and it was adopted by that body without amendment, in an act bearing date of March 29, 1867. Three other provinces have since given in a voluntary adhesion, one has been admitted out of previously unorganized territory, and there are other inchoate members.

The constitution thus created is in many respects like that of the United States; but it is decidedly more centralized. The principle adopted is novel in federal government; all powers not expressly stated to be exercised by the provinces are given to the Dominion of Canada: a very elaborate statement of the powers of each has been inserted; but it has not prevented serious conflicts between the confederation and members, or a frequent resort to the courts. By its authority to disallow unconstitutional acts, and to appoint provincial governors and judges, the central government has greater power than is given under any other federation. On the other hand, the whole Dominion is legally subject to the government of Great Britain; its status is like that of the early Swiss and mediæval city leagues under the Holy Roman Empire. The government is conducted under the English system of responsible Parliamentary government, and is a proof that this form is as easily applicable to a federation as to a simple government. National parties have been developed, but affect local politics less than in the United States.

The chief danger to which Canada, and with it British dominion in America, is exposed, is the separation of parts from the union. So far there has been developed a strong national feeling; and the elasticity of the federal tie keeps distant provinces united. The subjection of the local governments has gone too far; and, as the country increases in population, will throw too heavy a burden on the general Parliament. The federal government is well organized, powerful, and accords with the political habits of the people.

§ 54. **Effect of Canadian union on Australasia (1866-1890).**<sup>1</sup>—Notwithstanding the success of the Swiss and German federations, the federal principle seems likely to see its further development in the new worlds. Italy has been unified on a different principle: in the Balkan peninsula the favorable conditions for federal government have led to nothing: the centralized European states show no tendency to create autonomous administrative districts. The only exception is the case of England; with her vast colonial possessions scattered about the globe, England bears a striking resemblance to Athens at the time of her greatest power: and within these colonies there are two centres of federalizing influences. The Dominion of Canada has rather strengthened than weakened the relations of the North American group of colonies to the mother country. On the other side of the globe the conditions are so similar, that a movement is now in progress for the federal union of the Australasian and adjacent colonies. They are rich, prosperous, endowed with nearly independent representative governments, with a common desire to control the South Seas, separated from England and English interests by a wide distance, and already free to legislate in some cases against the mother country. A common danger would probably bring these colonies into a union resembling the Dominion of Canada; and the neighborhood of German colonies seems likely to hasten the result.

The first step in establishing federations in the Pacific was taken by the colony of New Zealand<sup>2</sup> in applying, in 1852, for an imperial act giving it a federal government. The country was undeveloped, and the conditions were unfavorable for the growth of provinces as units of government. After a trial of twenty-three years, the federal government in 1875 itself gave up the system, and New Zealand returned to a simple colonial government.

<sup>1</sup> **Australasian federation.** BIBLIOGRAPHY. Publications of the *Imperial Federation League* (post § 55); *Statesman's Year Book*, 1889, pp. 966-968, 1890, pp. 295, 296.—HISTORICAL GEOGRAPHY. Standard atlases; *Dilke, Problems of Greater Britain* (1890).—ACCOUNTS AND DISCUSSIONS. *Melbourne Review*, passim; *Debates of the Federal Conference*, held Jan., Feb., 1890; *Sir Henry Parke in the Centennial Magazine*; *Dilke, Problems of Greater Britain*, 259-275; *Engineering*, vol. 48, p. 487 (Oct. 25, 1889); *Statesman's Year Book*; *Government Year Book*, 1888, pp. 118-121.

<sup>2</sup> **New Zealand.** *McGee, Notes on Federal Government* (1865), pp. 45-75, with text; *R. Stout, Notes on the Progress of New Zealand* (1886); *J. C. Firth, Nation-Making* (1890).

On the continent of Australia the conditions are nearly like those of Canada. The colonies were established separately, and have slowly grown toward each other geographically and politically. Their commercial interests are similar; they can never submit to any divided fate. In race, language, laws, religion, they are practically one.

By an imperial act of 1885 a Federal Council was established for Australasia, expressly intended to prepare the way for a confederation. To this body, consisting of an equal number of representatives from each colony, is committed, under imperial supervision, the control of certain international relations, especially the fisheries. Independent of such supervision, it may regulate inter-colonial relations in such matters as the mutual enforcement of judgments. With the consent of the colonial legislatures it may go further. The meetings of the Council have been fruitful chiefly in the exchange of views. In 1890 was held a Federal Conference which served to crystallize public opinion. In February, 1891, will assemble a Federal Convention to draft Articles of Union, probably for submission to the action of the Imperial Parliament.

One of the chief difficulties in the way of Australasian union is the small number of colonies to which the union can apply. The whole continent is divided into five colonies: New Zealand and Tasmania will add two more. Some power of subdivision seems necessary. Another difficulty is the great distance of New Zealand, which may prevent that colony from joining the union. It is, however, so clear that federation will be likely to make Australasia a distinct factor in the modern world, that a speedy union is altogether likely.

§ 55. **Schemes of Imperial federation (1875–1890).**<sup>1</sup> — If federation can allay local jealousies, make commerce easy, and unite for defence the power of groups of colonies, might not the same prin-

<sup>1</sup> **Imperial federation.** BIBLIOGRAPHY. *Boose, List of Publications.* — HISTORICAL GEOGRAPHY. *Lucas, Historical Geography of the British Colonies* (1887); standard atlases, especially *Black, Stanford, Stieler, Andrée.* — ACCOUNTS AND DISCUSSIONS. Publications of the *Imperial Federation League*; *Imperial Federation. Journal of the League* (1886–1890); *Todd, Parliamentary Government in the Colonies* (1880); *Traill, Central Government* (1881), c. 6, 8; *Seeley, Expansion of England* (1883); *Lorne, Imperial Federation* (1885); *Dacey, Why England maintains the Union* (1887); *Franklyn, Unit of Imperial Federation* (1887); *Partridge, Making of the Irish Nation*; *Grant, Imperial Federation, a Lecture* (1890); *Dilke, Problems of Greater Britain* (1890), Part VII. — ARTICLES IN PERIODICALS. *British Quarterly* (Oct., 1884), p. 257; *Canadian Monthly*,

ciple be applied to the whole British Empire? Such is the question asked by many English writers. The demand of the Irish to have their local legislature restored to them accentuates the suggestion. An Imperial Parliament and administration may care for imperial affairs, and local parliaments may devote themselves to English, Irish, Canadian, or Cape Colony affairs, as the case may be. The advantages would be the relief of the English Parliament from imperial legislation, the participation of the colonists, the removal of an excuse for seeking their independence, and the mutual guaranty of the parts of the Empire by each other. Steam transportation and the telegraph take away the mechanical difficulty of the distance of the members of the Empire from each other. The scheme promises the permanent union of all English-speaking people, except the United States, and would create the most elaborate and mighty federal government in history.

It is this very elaboration which has caused the project to gain ground but slowly, if at all. A federation embracing among its members kingdoms, republican commonwealths, crown colonies with little power of their own, and two powerful federations, suggests a return to the Holy Roman Empire. The more important colonies would surrender their present privileges over commerce, and must assume burdens of taxation and defence from which they are now free. The smaller colonies would have an influence in the common parliament out of proportion to their importance. The dependencies, especially India, are set out of the scheme altogether; they must remain subject territories. To many minds the project seems one of dismemberment, of loss of vitality, of future disruption.

vol. 8, p. 335, vol. 12, p. 232; *Contemporary*, Goldwin Smith in vol. 45, pp. 524-540 (Apr., 1884), vol. 48, pp. 693-706 (Nov., 1885), *Baden-Powell* in vol. 50, p. 493 (Oct., 1886); *Edinburgh*, vol. 170, p. 247 (July, 1889); *E. A. Freeman* in *MacMillan's*, vol. 51, p. 430 (Apr., 1885), and *Fortnightly*, vol. 22, p. 204; *Fortnightly*, vol. 43, pp. 338, 346 (Mar., 1885), vol. 43, p. 437 (Apr., 1885); *National Review*, Montague Burrows and Sir Samuel Wilson, in vol. 4, pp. 365, 380 (Nov., 1884), vol. 5, p. 207 (Apr., 1885), vol. 5, p. 606 (July, 1885), *Baden-Powell* in vol. 7, p. 698 (July, 1886), vol. 8, p. 66 (Sept., 1886); *Nineteenth Century*, vol. 16, p. 505 (Sept., 1884), *W. E. Forster* in vol. 17, pp. 201, 552 (Feb., Mar., 1885), *Bury and Lorne* in vol. 17, pp. 381, 397 (Mar., 1885), vol. 17, p. 590 (Apr., 1885), vol. 19, p. 22 (Jan., 1886); *North American*, vol. 141, pp. 60, 72 (July, 1885); *Quarterly Review*, vol. 159, pp. 201, 498 (Jan., 1885); *Saturday Review*, vol. 62, p. 213 (Aug. 14, 1886); *W. Leggo*, *Imperial Confederation from a Canadian Point of View*, in *Scottish Review*, vol. 6, p. 48 (July, 1885), and vol. 7, p. 340 (Apr., 1886); *Spectator*, vol. 56<sup>2</sup>, p. 1305 (Oct. 13, 1883).

## CHAPTER V.

### *LATIN-AMERICAN CONFEDERATIONS.*<sup>1</sup>

- § 56. Mexico (1824-1835, 1867-1890).
- § 57. Central-American Confederation (1824-1839).
- § 58. Venezuela (1830-1890).
- § 59. Argentine Republic (1860-1890).
- § 60. United States of Colombia (1863-1886).
- § 61. Brazil (1889-1890).

<sup>1</sup> **Latin-American federations.** BIBLIOGRAPHIES. *De Beeche, Bibliografia Americana* (1879); *Boston Public Library, Catalogue of Ticknor Library* (1879); *H. H. Bancroft, History of the Pacific States of North America*, vols. III, VII-X (1885-1888), on North-American federations only; *Levermore and Dewey, Political History since 1815*, pp. 107-111; *Winsor, Narrative and Critical History of America*, VIII (1889), c. iv, v, deals almost entirely with the colonial and revolutionary periods. No useful list of works on Latin-American public law has been found in the bibliographies of public law (*post* § 465). — TEXTS. In some of the collections mentioned *post* § 462; some texts in *Arosemena, Estudios* (1878); most of them in English in *British and Foreign State Papers*; the later ones in French in the *Archives Diplomatiques*; a few in *Dareste, Constitutions*. There are separate publications of all constitutions now in force. — HISTORICAL GEOGRAPHY. *Lavoisne, Atlas* (1821), No. 67; *Droysen, Historischer Hand-atlas* (1886), Nos. 82-85; standard atlases of modern geography. Maps in *Vincent, Around and about South America* (1890); *Savage, Manual* (1889); *Bates, Central America, West Indies, and South America* (1882); maps in the political geographies published between 1820 and 1870; *Ansart, Atlas Historique, Cartes Modernes*, 5, 6. — TREATISES. *Arosemena, Estudios constitucionales sobre los gobiernos de la America latina* (1878); *Colmeiro, Derecho constitucional de las republicas hispano-americanas*; *Seijas, Derecho internacional hispano-americana* (1884-1885); *Calvo, Annales historiques* (1864-67), on the beginnings of independent government; *Savage, Manual of International and Commercial Interchange between the United States and Spanish America* (1889), 417-506. — HISTORICAL ACCOUNTS AND DESCRIPTIONS. Comprehensive accounts of the Latin-American governments, taken together, since their independence, are wanting, except the voluminous work of *Gervinus, Geschichte des 19ten Jahrhunderts*. Historical sketches in the treatises mentioned above: *Bancroft, Pacific States*, deals only with Mexico and Central America; *H. W. Bates, Central America, the West Indies, and South America* (1882); *Revue Sud-Americaine* ( ). — BRIEF ACCOUNTS. *Winsor, Narrative and Critical*, VIII, 220-232, 334-342, chiefly political; *United States Consular Reports*; *Phillimore*, § 121; *Calvo, Recueil Complet*, II (1863), pp. i-xxxiv; *Calvo, Droit International*, § 59; *Statesman's Year Book* (annual); *Government Year Book* (1888).



§ 56. **Mexico (1824-1835, 1867-1890).**<sup>1</sup> — Side by side with the four governments which are asserting the permanence of national federation has grown up a group of states which prove how much the federal principle depends upon the political character of the people. The history of the Spanish colonies in America closely

<sup>1</sup> **Mexico.** BIBLIOGRAPHIES. *Arosemena*, II, 195; *H. H. Bancroft, Pacific States*, vols. IV-IX passim, especially VII, pp. xxi-lxii, 820-829, VIII, 66-70, 147-150, IX, 463-465, 659-666; *Catalogue of Ticknor Library* (1879), 226; *Biblioteca Mejicana* (1869); *Brasseur de Bourbourg, Bibliothèque mexico-gaulemaliennne* (1871); *Directorio para las oficinas del servicio público de correos de la República mexicana* (1876), pp. 437-533; *Ramirez, Biblioteca mexicana* (1880); *Beristain y Martin de Loaza, Biblioteca Hispano-americana setentrional*, 2 ed. (1883); *Anderson, Mexico from the Material Standpoint* (1884), pp. 137-156; *Winsor*, VIII (1889), 266-270; *Foster, Reference Lists*, No. 90 (Feb., 1884); *Dareste*, II, 507; *Lalor, Cyclopadia*, II, 836; *R. Clarke, Bibliotheca Americana*, 232-234; *Statesman's Year Book*; *Peabody Institute Catalogue*, IV, 2883, with periodical articles. — TEXTS. Separate editions of the federal constitutions of 1824 and 1867; *British and Foreign State Papers*, vol. 13, pp. 695, 704, vol. 25, p. 683, vol. 47, p. 472; *Abbott, Mexico and the United States*, 283-309; *Archives Diplomatiques*, III, 252-262; *Dareste*, II, 475-507. — HISTORICAL GEOGRAPHY. *Humboldt, Versuch über den politischen Zustand des Königreichs Neu-Spanien* (1809), English translation (1822); Cartography of Mexico in *Winsor*, VII, 553; *Foster, References to Presidential Administrations*; *Zamacois*, XVIII, Pt. II, p. 1733. — TREATISES. On the first period no treatises have been found. On the later period: *Derecho Internacional Mexicano*, official edition, 1878; *Gonzalez, Derecho Constitucional*, 3 ed. (1879). — HISTORICAL ACCOUNTS AND DESCRIPTIONS. On the earlier period: *Alaman, Historia de Méjico* (1849-52); *Winsor*, VIII, 193-232; *Poinsett, Notes on Mexico* (1825); *Ward, Mexico* (1829); *Thompson, Recollections of Mexico* (1846); *Mayer, Mexico as it was and is*, 3 ed. (1847); *Abbott, Mexico and the United States* (1869), Part VI; *H. H. Bancroft, Pacific States*, VIII (1885), 1-150; *Bancroft, Popular History of Mexican People* (1887); *Zamacois, Historia de Méjico* (1888, 78-82), 19 vols. — On the present federation there is a large literature, chiefly books of travel: *Richthofen, Aeusseren und inneren Zustände der Republik von Mexico* (1859); *Castillo, México en el Siglo XIX* (1875); *G. Cubas, Republic of Mexico* (1876); *Van Bruyssel, Les États-Unis Mexicains* (1880); *Castro, Republic of Mexico in 1882*; *H. Conkling, Mexico and the Mexicans* (1882); *L. Hamilton, Border States of Mexico* (1882); *G. Cubas, Cuadro geographico, estadico, descriptivo e historico* (1884); *H. H. Bancroft, Popular History* (1887); *H. H. Bancroft, Pacific States*, IX (1888), 333-665; especially valuable is *Wells, Study of Mexico* (1887); *Abbott, Mexico and the United States*; *Strother in United States Consular Reports*. — BRIEF ACCOUNTS. *Lalor, Cyclopadia*, II, 833-837; *Dareste*, II, 475-477; *Government Year Book* (1888); *Statesman's Year Book*; *L'Art de Verifier les Dates*, 3 Par., IX (1826), 250-264; *H. H. Bancroft, Pacific States*, IX, c. 20; *Bastian in Sammlung Wissenschaftlicher Vorträge*, III, 463-502 (1869); *McSherry, Mexico and Mexican Affairs*, in his *Essays and Lectures*, p. 31-; *J. T. Morgan, Mexico in North American Review*, vol. 136, pp. 409-419 (1883). Many other articles in periodicals, especially *Nation*. — BEST REFERENCES. *Wells, Study of Mexico*; *Bancroft*, IX, c. 20; *Abbott, Study of Mexico*; *Lalor*. Special thanks are due to Señor Romero, Mexican minister, who has furnished several of the above titles.

resembles that of the English colonies: for a long period dependent, then revolting, then going through a period of war, then independent but feeble, it is not strange that they adopted the political device which seemed to render their northern neighbors strong. The first period of revolution in the Spanish-American colonies began in 1808; in 1814-16 it broke out again, and by 1825, instead of the Spanish colonial empire, there were a dozen detached and independent nations. Most of them became nominal republics; Brazil alone continued an hereditary monarchy beyond 1824, and in that country the Portuguese sovereign had taken refuge, and his direct line continued.

The province of New Spain had for nearly three centuries been under one viceroy, when, in 1821, the Spanish yoke was thrown off. The subdivisions of the country were only administrative. Nevertheless, after one year's experience of a centralized despotism, the empire of Iturbide (1822-23), the attempt was made to set up not only a Mexican republic, but also a Mexican federation.<sup>1</sup> The old internal lines were abandoned; nineteen states and four territories were at once created. After eleven troubled years, the confederacy was overwhelmed; and during the ensuing thirty-two years the country went through a succession of crises; dictatorships, constitutional republics, federal republics, followed in swift succession. The revolt of Texas (1836) and the conquest of New Mexico and California by the United States (1846) were followed in 1863 by the French invasion and the empire of Maximilian.

In 1867, after the fall of Maximilian, a federal constitution which had been adopted in 1857 was put into force, and, with some amendments, is still the law of the country. Several causes have combined to prevent the establishment of the government on a true federal basis: the states are but artificial divisions, and have no civic pride of their own and no independence of action; the relation of church and state is still not completely settled; the country has a heavy debt, and in the process of settling it is compelled to lay heavy national taxes, thus stifling the states; and unrestricted constitutional opposition to the government is not permitted. President Diaz, who has been in office since 1884, is an able administrator and a man of strong national spirit; but

<sup>1</sup> A constitution, closely modelled upon that of the United States, was promulgated Nov. 5, 1824.

the danger of a revolution is still such that the states are not permitted to exercise any powers which might make them centres of military force; and the new railroads, while they assist the government in maintaining peace and order, tend still farther to concentrate power in the capital.

§ 57. **Central American Confederation (1824-1839).**<sup>1</sup>— Out of another part of the viceroyalty of New Spain was created another confederation in the same year in which Mexico was founded. The provinces of San Salvador, Guatemala, Honduras, Costa Rica, and Nicaragua had been part of Iturbide's empire (1822-23); at its fall, they held a Federal Constitutional Assembly, and the work was completed Nov. 22, 1824. The document is in substance almost the same as the Constitution of the United States; but a time when the statesmen of the United States were still debating whether nullification was not consistent with federal obligation, was not very favorable for unions having a federal tie less strong. The new government was torn by factions. About 1820 Morazan obtained a practical dictatorship; when he was driven out in 1839, the confederacy fell to pieces.

Since that time independent governments have been maintained; but occupying, as they do, the region across which a world's highway must eventually be led, the Central American states have a common interest which ought to unite them. There have been repeated conflicts, and in 1890 war broke out between San Salvador and Guatemala to prevent a forced union under the dictation of Guatemala, and federation again seems indefinitely deferred.

§ 58. **Venezuela (1830-1890).**<sup>2</sup>— The Mexican and the Central American confederations were each an attempt to reunite states which had been subjected to common control as colonies. Gen-

<sup>1</sup> **Central American Confederation.** BIBLIOGRAPHIES. Notes to *Bancroft, Pacific States*, III, 1-146; *Bandelier, Notes on the Bibliography of Yucatan and Central America*, in *American Antiquarian Society, Proceedings*, new series, vol. 1, pp. 82-118 (1886); *Brigham, Guatemala*, 430-442; *Statesman's Year Book*, under Costa Rica, Guatemala, Honduras, Nicaragua, Salvador. — TEXTS. *British and Foreign State Papers*, vol. 12, p. 867, vol. 13, p. 720. — HISTORICAL ACCOUNTS. *Bancroft, Pacific States*, III, 60-144. — BRIEF ACCOUNTS. *L'Art de Verifier les Dates*, vol. 9 (1826), 391-396.

<sup>2</sup> **Venezuela.** BIBLIOGRAPHIES. *Rojas, Biblioteca de escritores venezolanos Contemporáneos* (1875); *Spence, Land of Bolivar*, II, 271-293; *Dareste*, II, 517; *Statesman's Year Book*. — TEXTS. *British and Foreign State Papers*, I, 1104, XVIII, 1119, LI, 341, LVII, 471; separate publications. — TREATISES. None found. — HISTORICAL

eral Simon Bolivar, the leader in the South American revolt from Spain, had a similar plan for all the Spanish-American states. He was able for a short time to hold together the former parts of the viceroyalty of Grenada in a single state called Colombia. In 1830 that combination, which had not adopted a federal government, was broken up, and one of the fragments, Venezuela, formed a separate federal constitution, Sept. 22, 1830. After 1847 the country was distracted by disputes and civil wars between the centralists, who desired to unify the government, and the federalists. The long struggle terminated in a new federal constitution, dated March 28, 1864. Like most of the Spanish-American states, Venezuela fell into the power of a dictator, Guzman Blanco, and Congress registered his decrees. The government still continues federal in form; but even in a country where the rights of the states have been the subject of repeated wars, there is practically both despotism and centralization.

§ 59. **Argentine Republic (1860–1890).**<sup>1</sup>—The most promising experiment in Latin-American federation has been that of the Argentine Republic. Of the provinces which made up the viceroyalty of La Plata, Buenos Ayres was the richest and most enterprising. It not only secured an early independence, but aided the provinces on the east and west coasts of South America. In 1815 a kind of federal government was adopted, but the con-

ACCOUNTS. *Thirion, États-unis de Venezuela* (1867); *Meulemans, République de Venezuela* (1872); *Dance, Four Years in Venezuela* (1876); *Spence, Land of Bolivar* (1878). — BRIEF ACCOUNTS. *Dareste*, II, 516; *Statesman's Manual*; *Encyclopædia Britannica*, 9 ed.; *Vincent, Around and about South America*, 405–425.

<sup>1</sup> **Argentine Republic.** BIBLIOGRAPHIES. *Gutierrez, Bibliografía de la primera imprenta de Buenos Aires* (1866); *Anuario Bibliográfico de la República Argentina* (1879–1890); *Lalor, Cyclopædia*, I, 118; *Statesman's Year Book*; *Dareste*, II, 525. — TEXTS. *F. Lajouane, Constituciones de la República Argentina*, 2d ed. (1885); *Arosemena*, I, 153; *British and Foreign State Papers*, vol. 14, 942, vol. 42, 779, vol. 6, 1028, 1042, vol. 52, 1066; *Dareste*, II, 527–552; separate publications. — TREATISES. *Alberdi, Organización de la Confederación* (1858); *Sarmiento, Commentaires*; *Saldías, Ensayo sobre la Historia de la Constitución Argentina* (1878); *V. G. Quesada, Virreinato del Río de la Plata 1776–1810* (1881), chapter on Las Intendencias; *F. Ramo Mejía, El Federalismo Argentino*. — HISTORICAL ACCOUNTS AND DESCRIPTIONS. *King, Twenty-Four Years in the Argentine Republic* (1846); *V. F. Lopez, Historia de la República Argentina hasta 1852*, 8 vols.; *Dominguez, Historia Argentina* (1861); *Clemens, La Plata Country* (1866); *Page, La Plata*; *Beck-Bernard, République Argentine* (1872); *Napp, Argentine Republic* (1876). — BRIEF ACCOUNTS. *Gallenga, South America* (1881), ch. xiii–xv; *Dareste*, II, 525, 526; *Lalor, Cyclopædia*, I, 114–118; *Calvo*, § 59; *Daireaux Conflits de la République Argentine in Revue des Deux Mondes*, 3 ser., vol. XI, 877–890 (1875).

federacy had never any strength, and early ceased to exist. In 1826 a unifying constitution was adopted, and in 1829 Rosas became dictator. He fell in 1852, and after a period of disruption the provinces came to an agreement, and framed the first federal constitution, which bears date Oct. 24, 1860.

Nevertheless, the federal spirit is not fully developed. The principal weakness of the federation, aside from the imperfect political development of the people, is the preponderance of the province of Buenos Ayres: it has about one-third of the whole population, and includes the metropolis. The result is frequent collision with the other thirteen states. It is a conflict between a rich urban community and the poorer and sparsely settled interior states. In 1890 a revolution caused a bloody contest in the streets of Buenos Ayres, and though the central government was successful, the President was forced to resign. The temper of the people will not suffer them to wait for the slow changes brought about in elections. The country has avoided the danger of a permanent dictatorship, and has many of the elements of federal growth.

§ 60. **United States of Colombia (1863-1886).**<sup>1</sup>—When, in 1830, the state of Colombia broke up into its two original component elements; each took on the form of a federation (see Venezuela, § 58); one of them was constituted "The Republic of New Grenada," and adopted a paper federal constitution. As in other Spanish-American states, the struggle between despotism and democracy took the form of a struggle between federalists and centralists; a succession of revolutions led finally to the civil war of 1860. The "federalists" triumphed. The old thirty-six provinces were grouped into eight states under the federal constitution of the United States of Colombia, May 8, 1863. The attempt was made to throw a greater degree of power on the representatives of the people than is usual in Spanish-American constitutions. Congress

<sup>1</sup> **United States of Colombia.** BIBLIOGRAPHIES. *Boston Public Library, Catalogue of the Ticknor Library*, 91; *Lalor, Cyclopædia*, II, 1011; *Statesman's Year Book*, Art. Colombia; *Dareste*, II, 515. — TEXTS. *British and Foreign State Papers*, I, 1069, 1181, XIX, 911, XXXII, 1160, XLVIII, 1250, LIII, 286; *Arosemena*, II, 1. — HISTORICAL GEOGRAPHY. *Walker, Colombia* (1822), frontispiece. — TREATISES. *Samper, Ensayo sobre las Revoluciones políticas* (1861); *Colmeiro, Derecho Constitucional*. — HISTORICAL ACCOUNTS. *Bates, Central and South America* (1882); *Pereira, États-Unis de Colombie* (1883); especially *Hettner, Reisen in den columbianischen Anden*, 335-381. — BRIEF ACCOUNTS. *Statesman's Year Book*; *Savage, Manual*; *North American Review*, vol. 23, p. 314 (1826).

had the right, by a majority vote, to pass bills over the veto of the President. Here, as in neighboring countries, the ignorance of the voting population and the rivalries of statesmen destroyed the union. In 1886, as the result of another revolution, the states became simple departments, and the country is now known simply as the Republic of Colombia.

§ 61. **Brazil (1889–1890).**<sup>1</sup>—Of all the Latin-American governments, that of Brazil has during the past half-century seemed most stable; a royal house, a fair degree of prosperity, and, during the last years, a most enlightened ruler, have combined to uphold the last American monarchy. Perhaps the apparent progress of the country has outrun its advance in civilization. The Constitution of 1834 made provision for the exercise of local powers by the provinces; but it has never been effective in this respect. Certainly the abolition of slavery, which has been going on gradually since 1884, has caused discontent. On Nov. 15, 1889, a sudden insurrection caused the subversion of the government, the expulsion of the Emperor, and the proclamation of a republic. When the leaders of the movement made public their plans, they proposed a federal government, and on June 20, 1890, a federal constitution framed closely on the model of that of the United States was published as a proposition to be specially considered by representatives of the people in a congress to assemble Nov. 15, 1890. In no country of America do the conditions seem less favorable for federation. The country is vast; it has for centuries been accustomed to highly centralized and somewhat arbitrary government; the variety of races, the ignorance of the recently emancipated slaves and of the Indians, the lack of great common interests, the likelihood of complications with neighboring countries,—all make it likely that at best Brazil will go through a long course of revolutions before federal government is finally established.

<sup>1</sup> **Brazil.** The revolution in Brazil has been so recent that there is little literature on the federal republic. Text of the proposed constitution in French in the *L'Etoile du Sud*, Rio, June 8, 1890. An account of the weakness of the Empire is in *Gallenga, South America* (1881), c. xvii. Accounts of the revolution of 1889 in the *Annual Register*, 1889, pp. [444]–[448]; *Appleton's Annual Cyclopædia*, 1889, pp. 82–86; *Nation*, vol. 49, pp. 494, 495 (Dec. 19, 1889); *Saturday Review*, vol. 68, pp. 582, 585 (Nov. 23, 1889); *Spectator*, vol. 63, pp. 708, 835 (Nov. 23, Dec. 10, 1889); *Andover Review*, vol. 13, pp. 85–88 (Jan., 1890); *Mulhall, Brazil, Past and Future*, in *Contemporary*, vol. 57, pp. 103–111 (Jan., 1890); *Le Clerc, Lettres du Bresil* (1890); *M. T. Gibson*, letters published in the *New York Times*; *Tribune Extras*, No. 6 (1890).

## APPENDIX A.

### CONSPECTUS OF THE FEDERAL CONSTITUTIONS OF CANADA, GERMANY, SWITZERLAND, AND THE UNITED STATES OF AMERICA, ARRANGED IN PARALLEL FORM.

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#### **Explanation of the arrangement of the Conspectus.**

The constitutions of the four most important existing federations contain much matter essentially similar in all. Very different principles of fulness and analysis have, however, been adopted in drawing them up, and many articles appear in each not to be paralleled in any other. The Canadian Constitution is the most elaborate. It contains about 11,400 words, and is arranged in 147 articles, classified under 11 general heads. The German Constitution contains about 6000 words, the articles are 78, and the general heads 14; but many of the articles are long and elaborate. The Swiss Constitution is second in length. It has 7700 words in 127 articles; the classification is more general; there are three chapters, with some subdivisions. The United States has the briefest of the four constitutions. It includes but 5300 words, and is divided into 37 sections (including 13 amendments); the general heads are eight.

In all the constitutions except those of the United States the general heads have descriptive titles; and in the Canadian there are side-headings opposite each article, with a summary of the contents.

The difference of length and of arrangement in the four instruments is such that it has seemed advisable to adopt a general scheme of classification, which does not precisely follow the arrangement of either of the four constitutions. The following are the four great divisions of this scheme:—

- I. The Formation of the Constitution.
- II. The States.
- III. The Form of the Government.
- IV. The Powers of Government.

In many cases a provision might be considered either a definition of the powers of a particular officer or a department, thus coming under the general head of "form of government"; or as a grant of powers to the government, with a further designation of the department by which that power is to be exercised. In all such cases the clause appears under "Powers": it has seemed more important to know what the federal government might do than by whom it might be done. But in order to bring together all associated provisions, a system of cross-references has been adopted in these and other cases. No provision is printed twice. The titles of the paragraphs are intended to show the sub-heads of the analysis.

### Omissions from the original texts.

It is the intention to include once in this Conspectus every significant word of the four constitutions. The complete text of each is, therefore, to be found below in a rearranged form, with the following exceptions:—

1. The article and section numbers have been struck out at the beginning of the paragraphs, but reappear at the end of each. This process is necessary, because many articles are divided and the parts separated.

2. The side-headings in the Canadian Constitution have been omitted because their purpose is subserved by the paragraph headings of the Conspectus. Mr. J. G. Bourinot has given it as his opinion that those headings are not an integral part of the Dominion Constitution.

3. For a similar reason the "Schedules" of the Canadian Constitution have been left out, but reference to each of them will be found in its appropriate place.

With these exceptions, the original text has been preserved in every case, including capitalization and punctuation.

### Additions to the original texts.

The matter of the four constitutions appears in the Conspectus in Roman text. The headings and sub-headings, and the names of the countries inserted before each extract, are not a part of any of the texts, and are distinguished by **bold-faced type**. The cross-references are in *italics*. The references at the end of each extract are also set in *italics*. Paragraph or clause numbers have been added in several cases of long sections, for convenience of reference, though not printed in the original texts.

An apparent exception to the rule is the insertion in square brackets of words necessary to complete the sense of a divided sentence. In every such case the words inserted are those used in the original sentence, although the order is sometimes changed.

Words which appear in the text, therefore, not enclosed in square brackets, are the precise words of the original texts in every case, and appear nowhere else in the Conspectus outside of brackets.

### The texts used.

The texts used are as follows:—

For Canada, the official text of the British North America Act, 1867, printed for the Dominion government.

For Germany, the translation by Prof. Edmund J. James, in the *Publications of the University of Pennsylvania, Political Economy and Public Law Series*, No. 7. (Philadelphia, 1890.)

For Switzerland, the translation by the author of this monograph, in the *Old South Leaflets, General Series*, No. 18. (Boston, 1890.)

For the United States, the official text in the *Revised Statutes of the United States*, pp. 17-32. (Washington, 1878.)



## PART I.

### FORMATION OF THE CONSTITUTION.

#### § 62. Formation of the Constitution: — Official title.

**Canada.** — ANNO TRICESIMO VICTORIÆ REGINÆ. CAP. III. — An Act for the Union of Canada, Nova Scotia, and New Brunswick, and the Government thereof; and for Purposes connected therewith. (29th March 1867.) [*Title.*]

**Germany.** — THE IMPERIAL CONSTITUTION. [*Title.*]

**Switzerland.** — FEDERAL CONSTITUTION OF THE SWISS CONFEDERATION (OF MAY 29, 1874). [*Title.*]

**United States.** — CONSTITUTION OF THE UNITED STATES — 1787. [*Title.*]

#### § 63. Formation of the Constitution: — Purposes.

**Canada.** — Whereas the Provinces of Canada, Nova Scotia, and New Brunswick have expressed their Desire to be federally united into One Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a Constitution similar in Principle to that of the United Kingdom:

And whereas such a Union would conduce to the Welfare of the Provinces and promote the Interests of the British Empire:

And whereas on the Establishment of the Union by Authority of Parliament it is expedient, not only that the Constitution of the Legislative Authority in the Dominion be provided for, but also that the Nature of the Executive Government therein be declared:

And whereas it is expedient that Provision be made for the eventual Admission into the Union of other Parts of British North America: [*Preamble.*]

**Germany.** — . . . For the protection of the territory of the Confederation, and of the laws of the same, as well as for the promotion of the welfare of the German people. . . . [*Preamble.*]

**Switzerland.** — . . . Desiring to confirm the alliance of the Confederates, to maintain and to promote the unity, strength, and honor of the Swiss nation, . . . [*Preamble.*]

The purpose of the Confederation is, to secure the independence of the country against foreign nations, to maintain peace and order within, to protect the liberty and the rights of the Confederates, and to foster their common welfare. [*Art. 2.*]

**United States.** — . . . in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, . . . [*Preamble.*]

#### § 64. Formation of the Constitution: — Enacting power.

**Canada.** — Be it therefore enacted and declared by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows: [*Preamble.*]

**Germany.**—His Majesty, the King of Prussia, in the name of the North German Confederation, His Majesty the King of Bavaria, His Majesty the King of Wurtemberg, His Royal Highness the Grand Duke of Baden, and His Royal Highness the Grand Duke of Hesse and by Rhine for those parts of the Grand Duchy of Hesse which are situated south of the Main, conclude an eternal alliance . . . This Confederation shall bear the name of the German Empire, and shall have the following Constitution: [*Preamble.*]

**Switzerland.**—In the Name of Almighty God. The Swiss Confederation, . . . has adopted the Federal Constitution following: [*Preamble.*]

**United States.**—We the PEOPLE of the United States, . . . do ordain and establish this CONSTITUTION for the United States of America. [*Preamble.*]

§ 65. Formation of the Constitution:—Attestation of framers.

**Switzerland.**—Thus resolved by the National Council to be submitted to the popular vote of the Swiss people and of the Cantons.

*Bern, January 31, 1874.*

ZIEGLER, President.

SCHIESS, Secretary.

Thus resolved by the Council of States, to be submitted to the popular vote of the Swiss people and of the Cantons.

*Bern, January 31, 1874.*

A. KOPP, President.

J.-L. LUTSCHER, Secretary.

[*Added after Temporary Provisions.*]

**United States.**—Done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven, and of the Independence of the United States of America the Twelfth *In Witness* whereof We have hereunto subscribed our Names,

G<sup>o</sup>: WASHINGTON—

*Presidt. and Deputy from Virginia*

*New Hampshire.*

JOHN LANGDON

NICHOLAS GILMAN

*Massachusetts.*

NATHANIEL GORHAM

RUFUS KING

*Connecticut.*

WM. SAML. JOHNSON

ROGER SHERMAN

*New York.*

ALEXANDER HAMILTON

*New Jersey.*

WIL: LIVINGSTON

WM. PATERSON

DAVID BREARLEY

JONA: DAYTON

*Pennsylvania.*

B. FRANKLIN

THOS. FITZSIMONS

THOMAS MIFFLIN

JARED INGERSOLL

ROBT. MORRIS

JAMES WILSON

GEO. CLYMER

GOUV. MORRIS

<i>Delaware.</i>	
GEO: READ	RICHARD BASSETT
GUNNING BEDFORD Jun	JACO: BROOM
JOHN DICKINSON	
<i>Maryland.</i>	
JAMES MCHENRY	DANL. CARROLL
DAN OF ST THOS JENIFER	
<i>Virginia.</i>	
JOHN BLAIR —	JAMES MADISON Jr.
<i>North Carolina.</i>	
WM. BLOUNT	HU WILLIAMSON.
RICHD. DOBBS SPAIGHT	
<i>South Carolina.</i>	
J. RUTLEDGE,	CHARLES PINCKNEY
CHARLES COTESWORTH PINCKNEY	PIERCE BUTLER.
<i>Georgia.</i>	
WILLIAM FEW	ABR BALDWIN
Attest	WILLIAM JACKSON <i>Secretary</i>
	[ <i>Added after Art. VII.</i> ]

**§ 66. Formation of the Constitution:—How to be cited.**

**Canada.**—I. PRELIMINARY. [*Title I.*]

This Act may be cited as the British North America Act, 1867. [*Art. I.*]

**§ 67. Formation of the Constitution:—When to go into effect.**

**Canada.**—It shall be lawful for the Queen, by and with the Advice of Her Majesty's Most Honorable Privy Council, to declare by Proclamation that, on and after a Day therein appointed, not being more than Six Months after the passing of this Act, the Provinces of Canada, Nova Scotia, and New Brunswick shall form and be One Dominion under the Name of Canada; and on and after that Day those Three Provinces shall form and be One Dominion under that Name accordingly. [*Art. 3.*]

The subsequent Provisions of this Act shall, unless it is otherwise expressed or implied, commence and have effect on and after the Union, that is to say, on and after the Day appointed for the Union taking effect in the Queen's Proclamation; and in the same Provisions, unless it is otherwise expressed or implied, the Name Canada shall be taken to mean Canada as constituted under this Act. [*Art. 4.*]

**United States.**—The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same. [*Art. VII.*]

## PART II.

### THE STATES.

Canada. — II. UNION. [*Title II.*]

#### RELATIONS OF THE STATES WITH THE UNION.

##### § 68. Privileges of the States: — Admission.

*Original States in the Union* : § 281. *Power to admit new States* : § 282.

##### § 69. Privileges of the States: — General guaranty.

**Switzerland.** — The Confederation guarantees to the Cantons their territory, their sovereignty, within the limits fixed by Article 3, their Constitutions, the liberty and rights of the people, the constitutional rights of citizens, and the rights and powers which the people have conferred on those in authority. [*Art. 5.*]

##### § 70. Privileges of the States: — Guaranty of Constitutions.

**Switzerland.** — The Cantons are bound to ask of the Confederation the guaranty of their Constitutions.

This guaranty is accorded, provided :

(a) That the Constitutions contain nothing contrary to the provisions of the Federal Constitution.

(b) That they assure the exercise of political rights, according to republican forms, representative or democratic.

(c) That they have been ratified by the people, and may be amended whenever the majority of all the citizens demand it. [*Art. 6.*]

[Within the competence of the two Councils are:] The guaranty of the Constitution and of the territory of the Cantons ; intervention in consequence of such guaranty ; . . . [*Art. 85, § 7.*]

It [the Federal Council] takes care that the guaranty of the cantonal constitutions be observed. [*Art. 102, § 3.*]

**United States.** — The United States shall guarantee to every State in this Union a Republican Form of Government, . . . [*Art. II, Sec. 4.*]

*Guaranty of territorial claims* : § 284.

##### § 71. Privileges of the States: — Protection from invasion.

**Switzerland.** — In case of sudden danger of foreign attack, the authorities of the Cantons threatened shall request the aid of other members of the Confederation and shall immediately notify the federal government ; the subsequent action of the latter shall not thereby be precluded. The Cantons summoned are bound to give aid. The expenses shall be borne by the Confederation. [*Art. 15.*]

**United States.** — And [the United States] shall protect each of them [the States] against Invasion ; and . . . [*Art. II, Sec. 4.*]

**§ 72. Privileges of the States:—Protection from domestic violence.***Intervention on the call of a State: § 454.**Intervention without the call of a State: §§ 453, 454.***§ 73. Duties of the States.***Choice of members of the upper house: § 152. Submission to Courts: §§ 258-263.**Requesting aid in case of attack: § 454.**Granting aid in case of invasion: §§ 423, 429.**Use of state courts for national cases: § 257. Payment of requisitions: § 358.**General limitations on the States: §§ 98-104. Conduct of national elections: § 106.***Switzerland.**—*Submission to supervision of the Federal Council: § 273.***FORM OF STATE GOVERNMENTS.****Canada.**—V. PROVINCIAL CONSTITUTIONS. [*Title V.*]UNIFORMITY OF LAWS IN ONTARIO, NOVA SCOTIA, AND NEW BRUNSWICK. [*Title VI, Sub-title 4.*]**§ 74. State Governments:—Legislative department.****Canada.**—Legislative Power. [*Title V, Sub-title 2.*]There shall be a Legislature for Ontario consisting of the Lieutenant Governor and of One House, styled the Legislative Assembly of Ontario. [*Art. 69.*]The Legislative Assembly of Ontario shall be composed of Eighty-two Members, to be elected to represent the Eighty-two Electoral Districts set forth in the First Schedule to this Act. [*Art. 70.*]2.—**QUEBEC.** There shall be a Legislature for Quebec consisting of the Lieutenant Governor and of Two Houses, styled the Legislative Council of Quebec and the Legislative Assembly of Quebec. [*Art. 71.*]The Legislative Council of Quebec shall be composed of Twenty-four Members, to be appointed by the Lieutenant Governor in the Queen's Name, by Instrument under the Great Seal of Quebec, one being appointed to represent each of the Twenty-four Electoral Divisions of Lower Canada in this Act referred to, and each holding Office for the Term of his Life, unless the Legislature of Quebec otherwise provides under the Provisions of this Act. [*Art. 72.*]The Qualifications of the Legislative Councillors of Quebec shall be the same as those of the Senators for Quebec. [*Art. 73.*]The Place of a Legislative Councillor of Quebec shall become vacant in the Cases, *mutatis mutandis*, in which the Place of Senator becomes vacant. [*Art. 74.*]When a Vacancy happens in the Legislative Council of Quebec by Resignation, Death, or otherwise, the Lieutenant Governor, in the Queen's Name, by Instrument under the Great Seal of Quebec, shall appoint a fit and qualified Person to fill the Vacancy. [*Art. 75.*]If any Question arises respecting the Qualification of a Legislative Councillor of Quebec, or a Vacancy in the Legislative Council of Quebec, the same shall be heard and determined by the Legislative Council. [*Art. 76.*]The Lieutenant Governor may from Time to Time, by Instrument under the Great Seal of Quebec, appoint a Member of the Legislative Council of Quebec to be Speaker thereof, and may remove him and appoint another in his Stead. [*Art. 77.*]Until the Legislature of Quebec otherwise provides, the Presence of at least Ten Members of the Legislative Council, including the Speaker, shall be necessary to constitute a Meeting for the Exercise of its Powers. [*Art. 78.*]

Questions arising in the Legislative Council of Quebec shall be decided by a Majority of Voices, and the Speaker shall in all Cases have a Vote, and when the Voices are equal the Decision shall be deemed to be in the negative. [*Art. 79.*]

The Legislative Assembly of Quebec shall be composed of Sixty-five Members, to be elected to represent the Sixty-five Electoral Divisions or Districts of Lower Canada in this Act referred to, subject to Alteration thereof by the Legislature of Quebec: Provided that it shall not be lawful to present to the Lieutenant Governor of Quebec for Assent any Bill for altering the Limits of any of the Electoral Divisions or Districts mentioned in the Second Schedule to this Act, unless the Second and Third Readings of such Bill have been passed in the Legislative Assembly with the Concurrence of the Majority of the Members representing all those Electoral Divisions or Districts, and the Assent shall not be given to such Bill unless an Address has been presented by the Legislative Assembly to the Lieutenant Governor stating that it has been so passed. [*Art. 80.*]

3.—*ONTARIO AND QUEBEC.* The Legislatures of Ontario and Quebec respectively shall be called together not later than Six Months after the Union. [*Art. 81.*]

The Lieutenant Governor of Ontario and of Quebec shall from Time to Time, in the Queen's Name, by Instrument under the Great Seal of the Province, summon and call together the Legislative Assembly of the Province. [*Art. 82.*]

Until the Legislature of Ontario or of Quebec otherwise provides, a Person accepting or holding in Ontario or in Quebec any Office, Commission, or Employment permanent or temporary, at the Nomination of the Lieutenant Governor, to which an annual Salary, or any Fee, Allowance, Emolument, or profit of any Kind or Amount whatever from the Province is attached, shall not be eligible as a Member of the Legislative Assembly of the respective Province, nor shall he sit or vote as such; but nothing in this Section shall make ineligible any Person being a Member of the Executive Council of the respective Province, or holding any of the following Offices, that is to say, the Offices of Attorney General, Secretary and Registrar of the Province, Treasurer of the Province, Commissioner of Crown Lands, and Commissioner of Agriculture and Public Works, and in Quebec Solicitor General, or shall disqualify him to sit or vote in the House for which he is elected, provided he is elected while holding such Office. [*Art. 83.*]

Until the Legislatures of Ontario and Quebec respectively otherwise provide, all Laws which at the Union are in force in those Provinces respectively, relative to the following Matters, or any of them, namely,—the Qualifications and Disqualifications of Persons to be elected or to sit or vote as Members of the Assembly of Canada, the Qualifications or Disqualifications of Voters, the Oaths to be taken by Voters, the Returning Officers, their Powers and Duties, the Proceedings at Elections, the Periods during which such Elections, may be continued, and the Trial of controverted Elections and the Proceedings incident thereto, the vacating of the Seats of Members and the issuing and Execution of new Writs in case of Seats vacated otherwise than by Dissolution, shall respectively apply to Elections of Members to serve in the respective Legislative Assemblies of Ontario and Quebec. [*Art. 84, § 1.*]

Provided that until the Legislature of Ontario otherwise provides, at any Election for a Member of the Legislative Assembly of Ontario for the District of Algoma, in addition to Persons qualified by the Law of the Province of Canada to vote, every British Subject, aged Twenty-one Years or upwards, being a Householder, shall have a Vote. [*Art. 84, § 2.*]

Every Legislative Assembly of Ontario and every Legislative Assembly of Quebec shall continue for Four Years from the Day of the Return of the Writs for choosing the same (subject nevertheless to either the Legislative Assembly of Ontario or the Legislative Assembly of Quebec being sooner dissolved by the Lieutenant Governor of the Province), and no longer. [*Art. 85.*]

There shall be a session of the Legislature of Ontario and of that of Quebec once at least in every Year, so that Twelve Months shall not intervene between the last Sitting of the Legislature in each Province in one Session and its first Sitting in the next Session. [Art. 86.]

The following Provisions of this Act respecting the House of Commons of Canada shall extend and apply to the Legislative Assemblies of Ontario and Quebec, that is to say, — the Provisions relating to the Election of a Speaker originally and on Vacancies, the Duties of the Speaker, the absence of the Speaker, the Quorum, and the Mode of voting, as if those Provisions were here re-enacted and made applicable in Terms to each such Legislative Assembly. [Art. 87.]

4. — *NOVA SCOTIA AND NEW BRUNSWICK.* The Constitution of the Legislature of each of the Provinces of Nova Scotia and New Brunswick shall, subject to the Provisions of this Act, continue as it exists at the Union until altered under the Authority of this Act; and the House of Assembly of New Brunswick existing at the passing of this Act shall, unless sooner dissolved, continue for the Period for which it was elected. [Art. 88.]

5. — *ONTARIO, QUEBEC, AND NOVA SCOTIA.* Each of the Lieutenant Governors of Ontario, Quebec, and Nova Scotia shall cause Writs to be issued for the First Election of Members of the Legislative Assembly thereof in such Form and by such Person as he thinks fit, and at such Time and addressed to such Returning Officer as the Governor General directs, and so that the First Election of Member of Assembly for any Electoral District or any Subdivision thereof shall be held at the same Time and at the same Places as the Election for a Member to serve in the House of Commons of Canada for that Electoral District. [Art. 89.]

6. — *THE FOUR PROVINCES.* The following Provisions of this Act respecting the Parliament of Canada, namely, — the Provisions relating to Appropriation and Tax Bills, the Recommendation of Money Notes, the Assent to Bills, the Disallowance of Acts, and the Signification of Pleasure on Bills reserved, — shall extend and apply to the Legislatures of the several Provinces as if those Provisions were here re-enacted and made applicable in Terms to the respective Provinces and the Legislatures thereof, with the Substitution of the Lieutenant Governor of the Province for the Governor General, of the Governor General for the Queen and for a Secretary of State, of One Year for Two Years, and of the Province for Canada. [Art. 90.]

### § 75. State governments: — Executive department.

*Requirement of republican form of government: § 70.*

**Canada.** — EXECUTIVE POWER. (*Title V, Sub-title 1.*)

For each Province there shall be an Officer, styled the Lieutenant Governor, appointed by the Governor General in Council by Instrument under the Great Seal of Canada. [Art. 58.]

A Lieutenant Governor shall hold Office during the Pleasure of the Governor General; but any Lieutenant Governor appointed after the Commencement of the First Session of the Parliament of Canada shall not be removable within Five Years from his Appointment, except for Cause assigned, which shall be communicated to him in Writing within One Month after the Order for his Removal is made, and shall be communicated by Message to the Senate and to the House of Commons within One Week thereafter if the Parliament is then sitting, and if not then within One Week after the Commencement of the next Session of the Parliament. [Art. 59.]

The Salaries of the Lieutenant Governors shall be fixed and provided by the Parliament of Canada. [Art. 60.]

Every Lieutenant Governor shall, before assuming the Duties of his Office, make and

subscribe before the Governor General or some Person authorized by him, Oaths of Allegiance and Office similar to those taken by the Governor General. [*Art. 61.*]

The Provisions of this Act referring to the Lieutenant Governor extend and apply to the Lieutenant Governor for the Time being of each Province or other the Chief Executive Officer or Administrator for the Time being carrying on the Government of the Province, by whatever Title he is designated. [*Art. 62.*]

The Constitution of the Executive Authority in each of the Provinces of Nova Scotia and New Brunswick shall, subject to the Provisions of this Act, continue as it exists at the Union until altered under the Authority of this Act. [*Art. 64.*]

All Powers, Authorities, and functions which under any Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of Upper Canada, Lower Canada, or Canada, were or are before or at the Union vested in or exercisable by the respective Governors or Lieutenant Governors of those Provinces, with the Advice, or with the Advice and Consent, of the respective Executive Councils thereof, or in conjunction with those Councils, or with any Number of Members thereof, or by those Governors or Lieutenant Governors individually, shall, as far as the same are capable of being exercised after the Union in relation to the Government of Ontario and Quebec respectively, be vested in and shall or may be exercised by the Lieutenant Governor of Ontario and Quebec respectively, with the Advice or with the Advice and Consent of or in conjunction with the respective Executive Councils, or any Members thereof, or by the Lieutenant Governor individually, as the Case requires, subject nevertheless (except with respect to such as exist under Acts of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland,) to be abolished or altered by the respective Legislatures of Ontario and Quebec. [*Art. 65.*]

The Provisions of this Act referring to the Lieutenant Governor in Council shall be construed as referring to the Lieutenant Governor of the Province acting by and with the Advice of the Executive Council thereof. [*Art. 66.*]

The Governor General in Council may from Time to Time appoint an Administrator to execute the Office and Functions of Lieutenant Governor during his Absence, Illness, or other Inability. [*Art. 67.*]

The Executive Council of Ontario and of Quebec shall be composed of such Persons as the Lieutenant Governor from Time to Time thinks fit, and in the first instance of the following Officers, namely, — the Attorney General, the Secretary and Registrar of the Province, the Treasurer of the Province, the Commissioner of Crown Lands, and the Commissioner of Agriculture and Public Works, with in Quebec, the Speaker of the Legislative Council and the Solicitor General. [*Art. 63.*]

Until the Legislature of Ontario or of Quebec otherwise provides, the Lieutenant Governors of Ontario and Quebec may each appoint under the Great Seal of the Province the following Officers, to hold Office during Pleasure, that is to say, — the Attorney General, the Secretary and Registrar of the Province, the Treasurer of the Province, the Commissioner of Crown Lands, and the Commissioner of Agriculture and Public Works, and in the Case of Quebec the Solicitor General; and may, by Order of the Lieutenant Governor in Council, from Time to Time prescribe the Duties of those Officers and of the several Departments over which they shall preside or to which they shall belong, and of the Officers and Clerks thereof; and may also appoint other and additional Officers to hold Office during Pleasure, and may from Time to Time prescribe the Duties of those Officers, and of the several Departments over which they shall preside or to which they shall belong, and of the Officers and Clerks thereof. [*Art. 134.*]

Until the Legislature of Ontario or Quebec otherwise provides, all Rights, Powers,



Duties, Functions, Responsibilities, or Authorities at the passing of this Act vested in or imposed on the Attorney General, Solicitor General, Secretary and Registrar of the Province of Canada, Minister of Finance, Commissioner of Crown Lands, Commissioner of Public Works, and Minister of Agriculture and Receiver General, by any Law, Statute or Ordinance of Upper Canada, Lower Canada, or Canada, and not repugnant to this Act, shall be vested in or imposed on any Officer to be appointed by the Lieutenant Governor for the Discharge of the same or any of them; and the Commissioner of Agriculture and Public Works shall perform the Duties and Functions of the Office of Minister of Agriculture at the passing of this Act imposed by the Law of the Province of Canada, as well as those of the Commissioner of Public Works. [*Art. 135.*]

Unless and until the Executive Government of any Province otherwise directs with respect to that Province, the Seats of Government of the Provinces shall be as follows, namely, — of Ontario, the City of Toronto; of Quebec, the City of Quebec; of Nova Scotia, the City of Halifax; and of New Brunswick, the City of Fredericton. [*Art. 68.*]

The Lieutenant Governor of Quebec may from Time to Time, by Proclamation under the Great Seal of the Province, to take effect from a day to be appointed therein, constitute Townships in those Parts of the Province of Quebec in which Townships are not then already constituted, and fix the Metes and Bounds thereof. [*Art. 144.*]

#### § 76. State governments: — Judiciary department.

**Canada.** — The Governor General shall appoint the Judges of the Superior, District, and County Courts in each Province, except those of the Courts of Probate in Nova Scotia and New Brunswick. [*Art. 96.*]

Until the Laws relative to Property and Civil Rights in Ontario, Nova Scotia, and New Brunswick, and the Procedure of the Courts in those Provinces, are made uniform, the Judges of the Courts of those Provinces appointed by the Governor General shall be selected from the respective Bars of those Provinces. [*Art. 97.*]

The Judges of the Courts of Quebec, shall be selected from the Bar of that Province. [*Art. 98.*]

The Judges of the Superior Courts shall hold office during good Behaviour, but shall be removable by the Governor General on Address of the Senate and House of Commons. [*Art. 99.*]

The Salaries, Allowances, and Pensions of the Judges of the Superior, District, and County Courts (except the Courts of Probate in Nova Scotia and New Brunswick,) and of the Admiralty Courts in Cases where the Judges thereof are for the Time being paid by Salary, shall be fixed and provided by the Parliament of Canada. [*Art. 100.*]

*Provisions for securing uniformity of procedure in the provincial Courts of Ontario, New Brunswick and Nova Scotia: § 402.*

#### § 77. State governments: — Temporary arrangements.

**Canada.** — *ONTARIO AND QUEBEC.* Until altered by the Lieutenant Governor in Council, the Great Seals of Ontario and Quebec respectively shall be the same, or of the same Design, as those used in the Provinces of Upper Canada and Lower Canada respectively before their Union as the Province of Canada. [*Art. 136.*]

The Words “and from thence to the End of the then next ensuing Session of the Legislature,” or Words to the same Effect, used in any temporary Act of the Province of Canada not expired before the Union, shall be construed to extend and apply to the next Session of the Parliament of Canada, if the subject Matter of the Act is within the Powers of the same, as defined by this Act, or to the next Sessions of the Legislatures of Ontario and Quebec respectively, if the Subject Matter of the Act is within the Powers of the same as defined by this Act. [*Art. 137.*]

From and after the Union the Use of the Words "Upper Canada" instead of "Ontario," or "Lower Canada" instead of "Quebec," in any Deed, Writ, Process, Pleading, Document, Matter, or Thing, shall not invalidate the same. [*Art. 138.*]

Any Proclamation under the Great Seal of the Province of Canada issued before the Union to take effect at a Time which is subsequent to the Union, whether relating to that Province, or to Upper Canada, or to Lower Canada, and the several Matters and Things therein proclaimed shall be and continue of like Force and Effect as if the Union had not been made. [*Art. 139.*]

Any Proclamation which is authorized by any Act of the Legislature of the Province of Canada to be issued under the Great Seal of the Province of Canada, whether relating to that Province, or to Upper Canada, or to Lower Canada, and which is not issued before the Union, may be issued by the Lieutenant Governor of Ontario or of Quebec, as its Subject Matter requires, under the Great Seal thereof; and from and after the Issue of such Proclamation the same and the several Matters and Things therein proclaimed shall be and continue of the like Force and Effect in Ontario or Quebec as if the Union had not been made. [*Art. 140.*]

ELECTORAL DISTRICTS OF ONTARIO. [*The First Schedule : text omitted.*]

ELECTORAL DISTRICTS OF QUEBEC SPECIALLY FIXED. [*The Second Schedule : text omitted.*]

#### § 78. State governments:—Continuance of existing arrangements.

**Canada.**—Except as otherwise provided by this Act, all Laws in force in Canada, Nova Scotia, or New Brunswick at the Union, and all Courts of Civil and Criminal Jurisdiction, and all legal Commissions, Powers, and Authorities, and all Officers, Judicial, Administrative, and Ministerial, existing therein at the Union, shall continue in Ontario, Quebec, Nova Scotia, and New Brunswick respectively, as if the Union had not been made; subject nevertheless (except with respect to such as are enacted by or exist under Acts of the Parliament of Great Britain or of the Parliament of the United Kingdom of Great Britain and Ireland,) to be repealed, abolished, or altered by the Parliament of Canada, or by the Legislature of the respective Province, according to the Authority of the Parliament or of the Legislature under this Act. [*Art. 129.*]

### INTERSTATE RELATIONS OF THE STATES.

#### § 79. Interstate relations:—Division of property.

**Canada.**—The Penitentiary of the Province of Canada shall, until the Parliament of Canada otherwise provides, be and continue the Penitentiary of Ontario and of Quebec. [*Art. 141.*]

The Division and Adjustment of the Debts, Credits, Liabilities, Properties, and Assets of Upper Canada and Lower Canada shall be referred to the Arbitrament of Three Arbitrators, One chosen by the Government of Ontario, One by the Government of Quebec, and One by the Government of Canada; and the Selection of the Arbitrators shall not be made until the Parliament of Canada and the Legislatures of Ontario and Quebec have met; and the Arbitrator chosen by the Government of Canada shall not be a Resident either in Ontario or in Quebec. [*Art. 142.*]

The Governor-General in Council may from Time to Time order that such and so many of the Records, Books, and Documents of the Province of Canada as he thinks fit shall be appropriated and delivered either to Ontario or to Quebec, and the same shall thenceforth be the Property of that Province; and any Copy thereof or Extract therefrom, duly certified by the Officer having charge of the Original thereof, shall be admitted as Evidence. [*Art. 143.*]

The Assets enumerated in the Fourth Schedule to this Act belonging at the Union to the Province of Canada shall be the Property of Ontario and Quebec conjointly. [Art. 113.]

Assets to be the Property of Ontario and Quebec conjointly. [*The Fourth Schedule: text omitted.*]

**§ 80. Interstate relations:—Mutual execution of judgments and records.**

**Germany.**—[Under the supervision and legislative control of the Empire shall be] Regulations concerning the reciprocal execution of judicial sentences in civil matters, and the fulfillment of requisitions in general. [Art. 4, § 11.]

The authentication of public documents. [Art. 4, § 12.]

**Switzerland.**—Civil judgments definitely pronounced in any Canton may be executed anywhere in Switzerland. [Art. 61.] *Validity of marriages: § 312.*

**United States.**—Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof. [Art. IV, Sec. 1.]

**§ 81. Interstate relations:—Extradition of criminals.**

**Switzerland.**—The Confederation by law provides for the extradition of accused persons from one Canton to another; nevertheless, extradition shall not be made obligatory for political offenses and offenses of the press. [Art. 67.]

**United States.**—A person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up to be removed to the State having Jurisdiction of the Crime. [Art. IV, Sec. 2, § 2.]

**§ 82. Interstate relations:—Extradition of slaves.**

**United States.**—No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due. [Art. IV, Sec. 2, § 3.]

**§ 83. Interstate relations:—Poor laws.**

**Germany.**—The regulations governing the care of paupers, and their admission into the various local unions, shall not, however, be affected by the principle enunciated in the first paragraph. [Citizens of each State shall be treated in every other State as natives.] [Art. 3, § 3.]

In like manner those treaties shall remain in force which have been concluded between the various States of the Confederation in relation to the custody of persons who are to be expelled, the care of sick, and the burial of deceased citizens. [Art. 3, § 4.]

**Switzerland.**—A federal law shall provide for the regulation of the expenses of the illness and burial of indigent persons amenable to one Canton, who have fallen ill or died in another Canton. [Art. 48.] *Rights of settlement: § 310.*

**§ 84. Interstate relations:—Rights of citizens.**

*Privileges and immunities in other States: § 307.*

*Residence: § 308. Settlement: §§ 309, 310. Political rights: §§ 315-319.*

**§ 85. Interstate relations:—Commerce.**

*No interstate customs duties: § 361.*

*No discrimination against shipping from other States: § 378.*

*Interstate commerce regulated by the Union: § 383.*

## THE POWERS OF THE STATES.

## § 86. Powers of the States: — General enumeration.

*Reservation of non-delegated powers: § 276.*

**Canada.** — EXCLUSIVE POWERS OF PROVINCIAL LEGISLATURES. [Title VI, Subtitle 2.]

In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated, that is to say, — [Art. 92.]

*Provision for the effect of Dominion laws on property, civil rights, and procedure, when adopted by Provinces: § 402.*

## § 87. Powers of the States: — Local legislation.

**Canada.** — [In each Province the Legislature may exclusively make Laws in relation to] Generally all Matters of a merely local or private Nature in the Province. [Art. 92, § 16.]

## § 88. Powers of the States: — Municipal institutions.

**Canada.** — [In each Province the Legislature may exclusively make Laws in relation to] Municipal Institutions in the Province. [Art. 92, § 8.]

## § 89. Powers of the States: — Administration of justice.

**Canada.** — [In each Province the Legislature may exclusively make Laws in relation to] The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts. [Art. 92, § 14.]

**Switzerland.** — The administration of justice remains with the Cantons, save as affected by the powers of the Federal Court. [Art. 64, § 6.]

## § 90. Powers of the States: — Territorial.

**Canada.** — *Lands, mines, and public property to continue: § 286.*

**Germany.** — *Hanseatic towns to be free ports: § 283.*

**United States.** — *Consent to cessions of territory for national use: §§ 285, 286.*

*Not to be divided or annexed to other States without consent: § 282.*

## § 91. Powers of the States: — Power over citizens.

*Fixing the qualifications of federal voters: §§ 124, 152, 315-319.*

*Education: § 342. Chartering charitable institutions: § 451.*

*Solemnization of marriage: § 312.*

**Canada.** — *Refusal of assent to uniform laws on property and civil rights: § 402.*

*Divorce: 313. Criminal law: § 334.*

**Switzerland.** — *Regulation of religious bodies: § 339.*

*Requiring certificates of competency for the practice of professions: § 449.*

## § 92. Powers of the States: — Financial.

*Grants from the federal treasury: § 372.*

*Proceeds of excise to go to the States: § 365.*

**Canada.** — *Reservation of local taxes: § 350.*

*Provincial consolidated funds: § 350. Provincial taxation: § 355.*

*Provincial debts assumed by the Dominion: §§ 368, 373.*

**Germany.** — *Special assignment for expenditures for the Bavarian army: § 346.*

*Taxes to be collected by the States: § 347. Taxes for internal improvement: § 384.*

**Switzerland.** — *Temporary allowance for the loss of taxes: § 365.*

*Cantonal collection of liquor duties: §§ 364, 365.*

**§ 93. Powers of the States:—Commercial.***Local internal improvements: § 384.**Canada. — Creation of corporations for provincial objects: § 406.**Germany. — Special powers of Bavaria over railways: § 390.**Special powers of Bavaria and Wurtemberg over postal affairs: § 393.**Appointment of certain postal officials: § 395.**Temporary assignment of postal surplus: § 396.**Switzerland. — Enforcing laws as to weights and measures: § 400.***§ 94. Powers of the States:—Military.***Call for military aid from the Union: § 454. Authority over State forces: § 426.**Execution of federal military laws: § 428.**Titular command and inspection of troops: § 429.**Appointment of officers of State troops: § 430.**Germany. — External badges of the State troops: § 432.**Switzerland. — Equipment of troops at the expense of the Confederation: § 431.***§ 95. Powers of the States:—Foreign affairs.***Germany. — Temporary continuance of State consulates: § 413.**Switzerland. — Treaties with foreign powers on certain subjects: § 418.**Interstate treaties on certain subjects: § 420.***§ 96. Powers of the States:—Over constitutional amendments.***Constitutional amendments submitted to the States: § 457.**Germany. — Certain rights secured to States not to be taken away: §§ 390, 393, 430.**United States. — Application of States for a convention: § 456.**No State to be deprived of equal suffrage in the Senate: § 458.***§ 97. Powers of the States:—Over their own Constitutions.**

*Canada. — [In each Province the Legislature may exclusively make Laws in relation to] The Amendment from Time to Time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the Office of Lieutenant Governor. [Art. 92, § 1.]*

*Switzerland. — Cantonal constitutions must be amended whenever a majority of citizens desire it: § 70.*

**LIMITATIONS ON THE STATES.****§ 98. Limitations on States:—General and territorial.***A republican form of government to be maintained: § 70.**Switzerland. — Constitution not to be contrary to the Federal Constitution: § 70.**Land for military purposes to be ceded: § 286.***§ 99. Limitations on States:—As to citizens.***Recognition of each other's citizens: § 307.**Permitting citizens of other States to settle: §§ 308-310.**No deprivation of political rights: § 293.**Non-sectarian schools to be maintained: § 345. Criminals to be extradited: § 81.**Switzerland. — No expulsion of a citizen: § 293.**No extraordinary tribunals: § 321.**Special jurisdiction over State citizenship in federal courts: § 261.**United States. — Acceptance of national citizenship: § 290. No slavery: § 297.**No offices to be held by former rebels: § 319.**No deprivation without due process of law: § 326. Slaves to be extradited: § 82.*

**§ 100. Limitations on States: — Financial.**

*No State customs duties without consent : § 360. No interstate duties : § 361.*

*Switzerland. — No exit duty or right of redemption : § 357.*

*United States. — No tonnage duty : § 357.*

**§ 101. Limitations on States: — Commercial.**

*No discrimination against vessels of other States : § 378.*

*No regulation of interstate commerce : §§ 361, 383.*

*Permitting expropriations for public works : § 286.*

*Permitting the construction of railways : § 386.*

*No coinage : § 399. No legal tender : § 405.*

*Canada. — Intercolonial and foreign transit : § 384.*

*Agriculture and immigration : § 410.*

*Germany. — Acceptance of a uniform system of railway management : § 391.*

*Merchant vessels to form the commercial marine of the Empire : § 377.*

*United States. — Inspection laws subject to control of Congress : § 360.*

*No bills of credit or legal tender notes : §§ 399, 404.*

*No law impairing the obligation of contracts : § 402.*

**§ 102. Limitations on States: — Foreign affairs.**

*Interstate treaties forbidden : § 420.*

*Germany. — No new state consuls to be appointed : § 413.*

*Switzerland. — No military capitulations : § 418.*

*United States. — No treaties : § 418.*

**§ 103. Limitations on States: — Military.**

*No troops in time of peace without consent : § 427.*

*Germany. — Must furnish troops for a time according to population : § 425.*

*Switzerland. — All military resources subject to the control of the Confederation : § 423.*

*Must permit troops to pass in aid of threatened Cantons : § 454.*

*United States. — No ships of war in time of peace : 441.*

**§ 104. Limitations on States: — Police power and enforcement.**

*Germany. — May be coerced by execution : § 455.*

*Switzerland. — No gaming houses to be permitted : § 443.*

*Lotteries may be suppressed by the Federation : § 444.*

## PART III.

### FORM OF THE GOVERNMENT.

**Switzerland.**—CHAPTER II. FEDERAL AUTHORITIES. [*Chapter II.*]

#### THE LEGISLATIVE DEPARTMENT.

**Canada.**—IV.—LEGISLATIVE POWER. [*Title IV.*]

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#### PROVISIONS COMMON TO BOTH HOUSES.

§ 105. **Both Houses:—As forming a legislature.**

**Canada.**—There shall be One Parliament for Canada, consisting of the Queen, an Upper House styled the Senate, and the House of Commons. [*Art. 17.*]

**Germany.**—The legislative power of the Empire shall be exercised by the Federal Council and the Diet (Reichstag). [*Art. 5, § 1.*]

**Switzerland.**—With the reservation of the rights of the people and of the Cantons (Articles 89 and 121), the supreme authority of the Confederation is exercised by the Federal Assembly, which consists of two sections or councils, to wit:

(A) The National Council.

(B) The Council of States. [*Art. 71.*]

**United States.**—All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives. [*Art. I, Sec. 1.*]

§ 106. **Both Houses:—Choice;—Control of elections.**

**Switzerland.**—[Within the competence of the two Councils are:] Laws on the organization of and election of federal authorities. [*Art. 85, § 1.*]

**United States.**—The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators. [*Art. I, Sec. 4, § 1.*]

§ 107. **Both Houses:—Choice;—Proving elections.**

**United States.**—Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, . . . [*Art. I, Sec. 5, § 1.*]

§ 108. **Both Houses:—Choice;—Incompatibility of other functions.**

**United States.**—No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office. [*Art. I, Sec. 6, § 2.*]

*Ineligibility of former rebels: § 319.*

**§ 109. Both Houses: — Members; — Compensation.**

**United States.** — The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. [*Art. I, Sec. 6, § 1.*]

**§ 110. Both Houses: — Members; — Privilege.**

**Canada.** — The Privileges, Immunities, and Powers to be held, enjoyed, and exercised by the Senate and by the House of Commons and by the Members thereof respectively shall be such as are from Time to Time defined by Act of the Parliament of Canada, but so that the same shall never exceed those at the passing of this Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland and by the Members thereof. [*Art. 18.*]

**Germany.** — *Protection of members by the Courts: § 257.*

**United States.** — They [the Senators and Representatives] shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place. [*Art. I, Sec. 6, § 1.*]

**§ 111. Both Houses: — Members; — Instructions.**

**Switzerland.** — Members of either Council vote without instructions. [*Art. 91.*]

**§ 112. Both Houses: — Members; — Oath.**

**Canada.** — Every Member of the Senate or House of Commons of Canada shall before taking his Seat therein take and subscribe before the Governor General or some Person authorized by him, and every Member of a Legislative Council or Legislative Assembly of any Province shall before taking his Seat therein take and subscribe before the Lieutenant Governor of the Province or some Person authorized by him, the Oath of Allegiance contained in the Fifth Schedule to this Act; and every Member of the Senate of Canada and every Member of the Legislative Council of Quebec shall also, before taking his Seat therein, take and subscribe before the Governor-General, or some Person authorized by him, the Declaration of Qualification contained in the same Schedule. [*Art. 128.*]

**OATH OF ALLEGIANCE.** [*The Fifth Schedule: text omitted.*]

**DECLARATION OF QUALIFICATION.** [*The Fifth Schedule: text omitted.*]

**United States.** — The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; . . . [*Art. VI, § 3.*]

**§ 113. Both Houses: — Sessions; — Regular.**

**Canada.** — The Parliament of Canada shall be called together not later than Six Months after the Union. [*Art. 19.*]

There shall be a Session of the Parliament of Canada once at least in every Year, so that Twelve Months shall not intervene between the last Sitting of the Parliament in one Session and its first Sitting in the next Session. [*Art. 20.*]

**Germany.** — The convocation of the Federal Council and the Diet shall take place annually. [*Art. 13.*]

**Switzerland.** — The two Councils assemble annually in regular session upon a day to be fixed by the standing orders. [*Art. 86, § 1.*]

**United States.** — The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day. [*Art. I, Sec. 4, § 2.*]



**§ 114. Both Houses: — Sessions; — Summons and adjournment by the Executive.**

**Germany.** — The Emperor shall have the right to convene the Federal Council and the Diet, and to open, adjourn, and close them. [*Art. 12.*]

. . . and the Federal Council may be called together for the preparation of business without the Diet; the latter, however, shall not be convoked without the Federal Council. [*Art. 13.*]

**Switzerland.** — They [the two Councils] are convened in extra session by the Federal Council upon the request either of one fourth of the members of the National Council, or of five Cantons. [*Art. 86, § 2.*]

**United States.** — . . . he [the President] may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; . . . [*Art. II, Sec. 3.*]

**§ 115. Both Houses: — Sessions; — Adjournment by vote.**

*Adjournment by the Executive: § 114.*

**United States.** — Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting. [*Art. I, Sec. 5, § 4.*]

**§ 116. Both Houses: — Procedure; — Rules.**

**United States.** — Each House may determine the Rules of its Proceedings, . . . [*Art. I, Sec. 5, § 2.*]

**§ 117. Both Houses: — Procedure; — Discipline.**

**United States.** — [Each House may] punish its Members for disorderly Behavior, and, with the Concurrence of two thirds, expel a Member. [*Art. I, Sec. 5, § 2.*]

**§ 118. Both Houses: — Procedure; — Journal.**

**Canada.** — *Official languages of the Journals: § 305.*

**United States.** — Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; . . . [*Art. I, Sec. 5, § 3.*]

**§ 119. Both Houses: — Procedure; — Official languages.**

*Official languages in debate: § 305.*

**§ 120. Both Houses: — Procedure; — Publicity.**

**Switzerland.** — As a rule, the sittings of the Councils are public. [*Art. 94.*]

**§ 121. Both Houses: — Procedure; — Quorum.**

**Switzerland.** — In either Council a quorum is a majority of the total number of its members. [*Art. 87.*]

**United States.** — . . . and a Majority of each [House] shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide. [*Art. I, Sec. 5, § 1.*]

**§ 122. Both Houses: — Procedure; — Majority.**

**Switzerland.** — In the National Council and in the Council of States a majority of those voting is required. [*Art. 88.*]

**§ 123. Both Houses: — Procedure; — Form of vote.**

**United States.** — . . . and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those present, be entered on the Journal. [*Art. I, Sec. 5, § 3.*]

## THE LOWER HOUSE OF THE LEGISLATIVE DEPARTMENT.

**Canada.**—THE HOUSE OF COMMONS. [*Title IV, Sub-title 2.*]

**Germany.**—V. THE DIET (REICHSTAG). [*Title V.*]

**Switzerland.**—A. NATIONAL COUNCIL. [CONSEIL NATIONAL; NATIONALRATH.] [*Chapter II, Title i, Sub-title A.*]

**§ 124. Lower House:—Choice;—Qualifications of voters.**

*General qualifications of federal voters: §§ 315, 319.*

**§ 125. Lower House:—Choice;—Qualifications of members.**

**Switzerland.**—Every lay Swiss citizen who has the right to vote is eligible for membership in the National Council. [*Art. 75.*]

**United States.**—No Person shall be a Representative who shall not have attained to the Age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen. [*Art. I, Sec. 2, § 2.*]

*Additional qualifications for members of both Houses: § 108.*

**§ 126. Lower House:—Choice;—Incompatibility of other functions.**

**Canada.**—A Senator shall not be capable of being elected or of sitting or voting as a Member of the House of Commons. [*Art. 39.*]

**Germany.**—Government officials shall not require leave of absence in order to enter the Diet. [*Art. 21, § 1.*]

When a member of the Diet accepts a salaried office of the Empire, or a salaried office in one of the States of the Confederation, or accepts any office of the Empire or of a State involving higher rank or salary, he shall forfeit his seat and vote in the Diet, but may recover his place in the same by a new election. [*Art. 21, § 2.*]

**Switzerland.**—Representatives to the Council of States, members of the Federal Council, and officials appointed by that Council, shall not at the same time be members of the National Council. [*Art. 77.*]

**United States.**—*Incompatibility of executive officers for members of either House: § 108.*

**§ 127. Lower House:—Choice;—Preliminary apportionment.**

**Canada.**—The House of Commons shall, subject to the Provisions of this Act, consist of One hundred and eighty-one Members, of whom Eighty-two shall be elected for Ontario, Sixty-five for Quebec, Nineteen for Nova Scotia, and Fifteen for New Brunswick. [*Art. 37.*]

Until the Parliament of Canada otherwise provides, Ontario, Quebec, Nova Scotia, and New Brunswick shall, for the purposes of the Election of Members to serve in the House of Commons, be divided into Electoral Districts as follows:—[*Art. 40.*]

1.—*ONTARIO.* Ontario shall be divided into the Counties, Ridings of Counties, Cities, Parts of Cities, and Towns enumerated in the First Schedule to this Act, each whereof shall be an Electoral District, each such District as numbered in that Schedule being entitled to return One Member. [*Art. 40.*]

2.—*QUEBEC.* Quebec shall be divided into Sixty-five Electoral Districts, composed of the Sixty-five Electoral Divisions into which Lower Canada is at the passing of this Act divided under Chapter Two of the Consolidated Statutes of Canada, Chapter Seventy-five of the Consolidated Statutes for Lower Canada, and the Act of the Province of Canada of the Twenty-third Year of the Queen, Chapter One, or any other Act amending the same in force at the Union, so that each such Electoral Division shall be for the Purposes of this Act an Electoral District entitled to return One Member. [*Art. 40.*]

3.—*NOVA SCOTIA*. Each of the Eighteen Counties of Nova Scotia shall be an Electoral District. The County of Halifax shall be entitled to return Two Members, and each of the other Counties One Member. [*Art. 40.*]

4.—*NEW BRUNSWICK*. Each of the Fourteen Counties into which New Brunswick is divided, including the City and County of St. John, shall be an Electoral District. The City of St. John shall also be a separate Electoral District. Each of those Fifteen Electoral Districts shall be entitled to return One Member. [*Art. 40.*]

**Germany**.—Until regulated by the law, which according to Section 5 of the Election Law of May 31, 1869, is to be promulgated, 48 deputies shall be elected in Bavaria, 17 in Wurtemberg, 14 in Baden, 6 in Hesse, south of the River Main, and the total number shall consequently be 382. [*Art. 20, § 2.*]

**United States**.— . . . and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three. [*Art. I, Sec. 2, § 3.*]

### § 128. Lower House:—Choice;—Apportionment.

**Canada**.—On the Completion of the Census in the Year One thousand eight hundred and seventy-one, and of each subsequent decennial Census, the Representation of the Four Provinces shall be readjusted by such Authority, in such Manner, and from such Time, as the Parliament of Canada from Time to Time provides, subject and according to the following Rules:—

- (1). Quebec shall have the fixed Number of Sixty-five Members:
- (2). There shall be assigned to each of the other Provinces such a Number of Members as will bear the same Proportion to the Number of its Population (ascertained at such Census) as the Number Sixty-five bears to the Number of the Population of Quebec (so ascertained):
- (3). In the Computation of the Number of Members for a Province a fractional Part not exceeding One Half of the whole Number requisite for entitling the Province to a Member shall be disregarded; but a fractional Part exceeding One Half of that Number shall be equivalent to the whole Number:
- (4). On any such Re-adjustment the Number of Members for a Province shall not be reduced unless the Proportion which the Number of the Population of the Province bore to the Number of the aggregate Population of Canada at the then last preceding Re-adjustment of the Number of Members for the Province is ascertained at the then latest Census to be diminished by One Twentieth Part or upwards:
- (5). Such Re-adjustment shall not take effect until the Termination of the then existing Parliament. [*Art. 51.*]

The Number of Members of the House of Commons may be from Time to Time increased by the Parliament of Canada, provided the proportionate Representation of the Provinces prescribed by this Act is not thereby disturbed. [*Art. 52.*]

**Switzerland**.—[The National Council is] chosen in the ratio of one member for each 20,000 persons of the total population. Fractions of upwards of 10,000 persons are reckoned as 20,000.

Every Canton, and in the divided Cantons every Half-Canton, chooses at least one representative. [*Art. 72.*]

**United States**.—Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons,

including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. . . . The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; . . . [*Art. 1, Sec. 2, § 3.*]

*Manner of taking the census : § 408.*

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State. [*Amendment XIV, Sec. 2.*]

**§ 129. Lower House : — Choice ; — Manner.**

**Germany.** — The members of the Diet shall be chosen in a general election and by direct secret ballot. [*Art. 20.*]

**Switzerland.** — The National Council is composed of representatives of the Swiss people, . . . [*Art. 72.*]

The elections for the National Council are direct. They are held in federal electoral districts, which in no case shall be formed out of parts of different Cantons. [*Art. 73.*]

**United States.** — The House of Representatives shall be composed of Members chosen by the People of the several States, . . . [*Art. 1, Sec. 2, § 1.*]

**§ 130. Lower House : — Choice ; — Filling vacancies.**

**United States.** — When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies. [*Art. 1, Sec. 2, § 4.*]

**§ 131. Lower House : — Choice ; — Proving elections.**

**Germany.** — The Diet shall examine into the legality of the election of its members, and decide thereon. [*Art. 27.*]

**United States.** — *Proving elections of both Houses : § 107.*

**§ 132. Lower House : — Choice ; — First election.**

**Canada.** — Until the Parliament of Canada otherwise provides, all Laws in force in the several Provinces at the Union relative to the following Matters or any of them, namely, — the Qualifications and Disqualifications of Persons to be elected or to sit or vote as Members of the House of Assembly or Legislative Assembly in the several Provinces, the Voters at Elections of such Members, the Oaths to be taken by Voters, the Returning Officers, their Powers and Duties, the Proceedings at Elections, the Periods during which Elections may be continued, the Trial of controverted Elections, and Proceedings incident thereto, the vacating of Seats of Members, and the Execution of new Writs in case of Seats vacated otherwise than by Dissolution, — shall respectively apply to Elections of Members to serve in the House of Commons for the same several Provinces.

Provided that, until the Parliament of Canada otherwise provides, at any Election for a Member of the House of Commons for the District of Algoma, in addition to Persons qualified by the Law of the Province of Canada to vote, every male British Subject, aged Twenty-one Years or upwards, being a Householder, shall have a Vote. [*Art. 41.*]

For the First Election of Members to serve in the House of Commons the Governor

General shall cause Writs to be issued by such Person, in such Form, and addressed to such Returning Officers as he thinks fit. [*Art. 42, § 1.*]

The Person issuing Writs under this Section shall have the like Powers as are possessed at the Union by the Officers charged with the issuing of Writs for the Election of Members to serve in the respective House of Assembly or Legislative Assembly of the Province of Canada, Nova Scotia, or New Brunswick; and the Returning Officers to whom Writs are directed under this Section shall have the like Powers as are possessed at the Union by the Officers charged with the returning of Writs for the Election of Members to serve in the same respective House of Assembly or Legislative Assembly. [*Art. 42, § 2.*]

In case a Vacancy in the Representation in the House of Commons of any Electoral District happens before the Meeting of the Parliament, or after the Meeting of the Parliament before Provision is made by the Parliament in this Behalf, the Provisions of the last foregoing Section of this Act shall extend and apply to the issuing and returning of a Writ in respect of such vacant District. [*Art. 43.*]

**§ 133. Lower House:—Choice;—Term of members.**

**Canada.**—Every House of Commons shall continue for Five Years from the Day of the Return of the Writs for choosing the House and no longer. [*Art. 50.*]

**Germany.**—The Diet shall be elected for three years. It may be dissolved during that time by a resolution of the Federal Council, with the consent of the Emperor. [*Art. 24.*]

**Switzerland.**—The National Council is chosen for three years, and entirely renewed at each general election. [*Art. 76.*]

**United States.**—[Members shall be chosen] every second Year . . . [*Art. I, Sec. 2, § 1.*]

**§ 134. Lower House:—Choice;—Effect of dissolution.**

**Canada.**—[Every House shall continue Five Years] (subject to be sooner dissolved by the Governor General), . . . [*Art. 50.*]

**Germany.**—In the case of a dissolution of the Diet, new elections shall take place within a period of sixty days, and the Diet shall be called together within a period of ninety days after its dissolution. [*Art. 25.*]

**§ 135. Lower House:—Organization;—Choice of officers.**

**Canada.**—The House of Commons on its first assembling after a General Election shall proceed with all practicable Speed to elect One of its Members to be Speaker. [*Art. 44.*]

In case of a Vacancy happening in the Office of Speaker by Death, Resignation, or otherwise, the House of Commons shall with all practicable Speed proceed to elect another of its Members to be Speaker. [*Art. 45.*]

The speaker shall preside at all Meetings of the House of Commons. [*Art. 46.*]

Until the Parliament of Canada otherwise provides, in case of the Absence for any Reason of the Speaker from the Chair of the House of Commons for a Period of Forty-eight consecutive Hours, the House may elect another of its Members to act as Speaker, and the Member so elected shall during the Continuance of such Absence of the Speaker have and execute all the Powers, Privileges, and Duties of Speaker. [*Art. 47.*]

**Germany.**—[The Diet shall] elect its president, vice-presidents and secretaries. [*Art. 27.*]

**Switzerland.**—The National Council chooses out of its own number, for each regular or extraordinary session, a President and a Vice-President.

A member who has held the office of President during a regular session is ineligible either as President or as Vice-President at the next regular session.

The same member may not be Vice-President during two consecutive regular sessions. [Art. 78.]

**United States.** — The House of Representatives shall chuse their Speaker and other Officers; and . . . [Art. I, Sec. 2, § 5.]

**§ 136. Lower House: — Organization; — Powers of officers.**

*Casting vote of the presiding officer: § 147.*

**§ 137. Lower House: — Members; — Compensation.**

**Germany.** — The members of the Diet shall not be allowed to draw any salary, or be compensated as such. [Art. 32.]

**Switzerland.** — The members of the National Council receive a compensation out of the federal treasury. [Art. 79.]

**United States.** — *Compensation of members of either House: § 109.*

**§ 138. Lower House: — Members; — Instructions.**

**Germany.** — The members of the Diet are the representatives of the people as a whole, and shall not be bound by orders and instructions from their constituents. [Art. 29.]

**Switzerland.** — *No instructions for members of either House: § 111.*

**§ 139. Lower House: — Members; — Privilege.**

*Privilege of members of either House: § 40.*

**Germany.** — No member of the Diet shall at any time suffer legal or disciplinary prosecution on account of his vote, or on account of utterances made while in the performance of his functions, or be held responsible outside the Diet for his course within it. [Art. 30.]

Without the consent of the Diet, none of its members shall be tried or arrested during the session for any penal offence committed, except when arrested in the act of committing the offense, or in the course of the following day.

The same rule shall apply in the case of arrests for debt.

At the request of the Diet, all criminal proceedings instituted against one of its members, and likewise detention or arrest, shall be suspended during its session. [Art. 31.]

*Protection by the courts: § 257.*

**§ 140. Lower House: — Sessions; — Summons.**

*Summons of either House: § 114.*

**Canada.** — The Governor General shall from Time to Time, in the Queen's Name, by Instrument under the Great Seal of Canada, summon and call together the House of Commons. [Art. 38.]

**§ 141. Lower House: — Sessions; — Adjournment.**

**Germany.** — Unless by consent of the Diet, an adjournment of that body shall not exceed the period of thirty days, and shall not be repeated during the same session without such consent. [Art. 26.]

**United States.** — *Adjournment of either House: § 115.*

**§ 142. Lower House: — Procedure; — Rules.**

**Germany.** — It [the Diet] shall regulate its mode of transacting business, as well as . . . by establishing rules therefor. [Art. 27.]

**United States.** — *Rules of either House: § 116.*

**§ 143. Lower House: — Procedure; — Discipline.**

**Germany.** — [The Diet shall regulate] its own discipline. [Art. 27.]

**United States.** — *Discipline in either House: § 117.*

**§ 144. Lower House: — Procedure; — Publicity.**

**Germany.** — The proceedings of the Diet shall be public.

Truthful reports of the proceedings of the public sessions of the Diet shall subject those making them to no responsibility. [*Art. 22.*]

**Switzerland.** — *Publicity of sittings of either House: § 120.*

**§ 145. Lower House: — Procedure; — Quorum.**

*Quorum in either House: § 121.*

**Canada.** — The Presence of at least Twenty Members of the House of Commons shall be necessary to constitute a Meeting of the House for the Exercise of its Powers; and for that Purpose the Speaker shall be reckoned as a Member. [*Art. 48.*]

**Germany.** — The Diet shall take action by absolute (simple) majority. [*Art. 28, § 1.*]

**§ 146. Lower House: — Procedure; — Majority.**

**Germany.** — To render action valid, the presence of a majority of the statutory number of members shall be required.

In matters which according to this Constitution do not concern the entire Empire, only such members shall vote as are elected from States whose interests are affected by the proposition. (Repealed by act of February 24, 1873.) [*Art. 28.*]

**Switzerland.** — *Majority in either House: § 122.*

**§ 147. Lower House: — Procedure; — Casting vote.**

**Canada.** — Questions arising in the House of Commons shall be decided by a Majority of Voices other than that of the Speaker, and when the Voices are equal, but not otherwise, the Speaker shall have a Vote. [*Art. 49.*]

**Switzerland.** — When the votes are equally divided the President has a casting vote; in elections he votes in the same manner as other members. [*Art. 78.*]

**POWERS OF THE LOWER HOUSE.**

**§ 148. Lower House: — Powers; — Initiative in legislation.**

**Germany.** — The Diet shall have the right to propose laws within the jurisdiction of the Empire, and . . . [*Art. 23.*]

**Switzerland.** — *Initiative in either House: § 177.*

**United States.** — *Power to initiate money bills: § 179.*

**§ 149. Lower House: — Powers; — Share in legislation.**

*Consensus of both Houses: § 180.*

**§ 150. Lower House: — Powers; — Referring petitions.**

**Germany.** — [The Diet shall have the right] to refer petitions, addressed to it, to the Federal Council or the Chancellor of the Empire. [*Art. 23.*]

**§ 151. Lower House: — Powers; — Judicial.**

**United States.** — [The House of Representatives] shall have the sole Power of Impeachment. [*Art. I, Sec. 2, § 2.*]

**THE UPPER HOUSE OF THE LEGISLATIVE DEPARTMENT.**

**Canada.** — THE SENATE. [*Title IV, Sub-title 1.*]

**Germany.** — III. FEDERAL COUNCIL. [*Title III.*]

**Switzerland.** — B. COUNCIL OF STATES. (CONSEIL DES ÉTATS; STAENDERATH.) [*Chapter II, Title 1, Sub-title B.*]

**§ 152. Upper House: — Choice; — Manner and number.**

**Canada.** — The Governor General shall from Time to Time, in the Queen's Name, by

Instrument under the Great Seal of Canada, summon qualified Persons to the Senate; and, subject to the Provisions of this Act, every Person so summoned shall become and be a Member of the Senate and a Senator. [*Art. 24.*]

Such Persons shall be first summoned to the Senate as the Queen by Warrant under Her Majesty's Royal Sign Manual thinks fit to approve, and their Names shall be inserted in the Queen's Proclamation of Union. [*Art. 25.*]

If at any Time on the Recommendation of the Governor General the Queen thinks fit to direct that Three or Six Members be added to the Senate, the Governor General may by Summons to Three or Six qualified Persons (as the Case may be), representing equally the Three Divisions of Canada, add to the Senate accordingly. [*Art. 26.*]

In case of such Addition being at any Time made the Governor General shall not summon any Person to the Senate, except on a further like Direction by the Queen on the like Recommendation, until each of the Three Divisions of Canada is represented by Twenty-four Senators and no more. [*Art. 27.*]

**Germany.** — Each member of the Confederation may appoint as many delegates to the Federal Council as it has votes, . . . [*Art. 6.*]

**Switzerland.** — Each Canton appoints two representatives; in the divided Cantons, each Half-State chooses one. [*Art. 80.*]

**United States.** — [The Senators from each State shall be] chosen by the Legislature thereof, . . . [*Art. I, Sec. 3, § 1.*]

### § 153. Upper House: — Choice; — Filling vacancies.

**Canada.** — When a Vacancy happens in the Senate by Resignation, Death, or otherwise, the Governor General shall by Summons to a fit and qualified Person fill the Vacancy. [*Art. 32.*]

**United States.** — . . . and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies. [*Art. I, Sec. 3, § 2.*]

### § 154. Upper House: — Choice; — Apportionment.

**Canada.** — The Senate shall, subject to the Provisions of this Act, consist of Seventy-two Members, who shall be styled Senators. [*Art. 21.*]

The Number of Senators shall not at any Time exceed Seventy-eight. [*Art. 28.*]

In relation to the Constitution of the Senate, Canada shall be deemed to consist of Three Divisions —

1. Ontario;

2. Quebec;

3. The Maritime Provinces, Nova Scotia and New Brunswick; which Three Divisions shall (subject to the Provisions of this Act) be equally represented in the Senate as follows: Ontario by Twenty-four Senators; Quebec by Twenty-four Senators; and the Maritime Provinces by Twenty-four Senators, Twelve thereof representing Nova Scotia, and Twelve thereof representing New Brunswick.

In the Case of Quebec each of the Twenty-four Senators representing that Province shall be appointed for One of the Twenty-four Electoral Divisions of Lower Canada specified in Schedule A. to Chapter One of the Consolidated Statutes of Canada. [*Art. 22.*]

In case of the Admission of Newfoundland and Prince Edward Island, or either of them, each shall be entitled to a Representation in the Senate of Canada of Four Members, and (notwithstanding anything in this Act) in case of the Admission of Newfoundland the normal Number of Senators shall be Seventy-six and their maximum Number



shall be Eighty-two; but Prince Edward Island when admitted shall be deemed to be comprised in the third of the Three Divisions into which Canada is, in relation to the Constitution of the Senate, divided by this Act, and accordingly, after the Admission of Prince Edward Island, whether Newfoundland is admitted or not, the Representation of Nova Scotia and New Brunswick in the Senate shall, as Vacancies occur, be reduced from Twelve to Ten Members respectively, and the Representation of each of those Provinces shall not be increased at any Time beyond Ten, except under the Provisions of this Act for the Appointment of Three or Six additional Senators under the Direction of the Queen. [*Art. 147.*]

**Germany.**—The Federal Council shall consist of the representatives of the members of the Confederation, among which the votes shall be divided in such manner as that Prussia (including the former votes of Hanover, the Electorate of Hesse, Holstein, Nassau, and Frankfort) shall have 17 votes; Bavaria, 6 votes; Saxony, 4 votes; Wurtemberg, 4 votes; Baden, 3 votes; Hesse, 3 votes; Mecklenburg-Schwerin, 2 votes; Saxe-Weimar, 1 vote; Mecklenburg-Strelitz, 1 vote; Oldenburg, 1 vote; Brunswick, 2 votes; Saxe-Meiningen, 1 vote; Saxe-Altenburg, 1 vote; Saxe-Coburg-Gotha, 1 vote; Anhalt, 1 vote; Schwarzburg-Rudolstadt, 1 vote; Schwarzburg-Sondershausen, 1 vote; Waldeck, 1 vote; Reuss (elder branch), 1 vote; Reuss (younger branch), 1 vote; Schamburg-Lippe, 1 vote; Lippe, 1 vote; Lubeck, 1 vote; Bremen, 1 vote; Hamburg, 1 vote—total, 58 votes. [*Art. 6.*]

**Switzerland.**—The Council of States consists of forty-four representatives of the Cantons. [*Art. 80.*]

**United States.**—The Senate of the United States shall be composed of two Senators from each State, . . . [*Art. I, Sec. 3, § 1.*]

### § 155. Upper House:—Choice;—Qualifications of members.

**Canada.**—The Qualification of a Senator shall be as follows:—

- (1.) He shall be of the full Age of Thirty Years:
- (2.) He shall be either a Natural-born Subject of the Queen, or a Subject of the Queen naturalized by an Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of One of the Provinces of Upper Canada, Lower Canada, Canada, Nova Scotia, or New Brunswick, before the Union, or of the Parliament of Canada after the Union:
- (3.) He shall be legally or equitably seised as of Freehold for his own Use and Benefit of Lands or Tenements held in free and common Socage, or seised or possessed for his own Use and Benefit of Lands or Tenements held in Franc-alieu or in Roture, within the Province for which he is appointed, of the Value of Four thousand Dollars, over and above all Rents, Dues, Debts, Charges, Mortgages, and Incumbrances due or payable out of or charged on or affecting the same:
- (4.) His Real and Personal Property shall be together worth Four thousand Dollars over and above his Debts and Liabilities:
- (5.) He shall be resident in the Province for which he is appointed:
- (6.) In the Case of Quebec he shall have his Real Property Qualification in the Electoral Division for which he is appointed, or shall be resident in that Division: [*Art. 23.*]

DECLARATION OF QUALIFICATION. [*The Fifth Schedule: text omitted.*]

*Not to be a member of the House of Commons: § 126.*

**United States.**—No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall

not, when elected, be an Inhabitant of that State for which he shall be chosen. [Art. I, Sec. 3, § 3.]

**§ 156. Upper House : — Choice ; — Incompatibility of other functions.**

**Canada.** — If any Person being at the passing of this Act a Member of the Legislative Council of Canada, Nova Scotia, or New Brunswick, to whom a Place in the Senate is offered, does not within Thirty Days thereafter, by Writing under his Hand addressed to the Governor General of the Province of Canada or to the Lieutenant Governor of Nova Scotia or New Brunswick (as the Case may be), accept the same, he shall be deemed to have declined the same; and any Person who, being at the passing of this Act a Member of the Legislative Council of Nova Scotia or New Brunswick, accepts a Place in the Senate shall thereby vacate his Seat in such Legislative Council. [Art. 127.]

**Germany.** — No one shall be at the same time a member of the Federal Council and of the Diet. [Art. 9.]

**Switzerland.** — The members of the National Council and those of the Federal Council may not be representatives in the Council of States. [Art. 81.]

**United States.** — *Disqualification of holders of certain federal officers for membership in either House :* § 103.

**§ 157. Upper House : — Choice ; — Disqualification of a member.**

**Canada.** — The Place of a Senator shall become vacant in any of the following Cases : —

- (1.) If for Two consecutive Sessions of the Parliament he fails to give his Attendance in the Senate :
- (2.) If he takes an Oath or makes a Declaration or Acknowledgment of Allegiance, Obedience, or Adherence to a Foreign Power, or does an Act whereby he becomes a Subject or Citizen, or entitled to the Rights or Privileges of a Subject or Citizen, of a Foreign Power :
- (3.) If he is adjudged Bankrupt or Insolvent, or applies for the Benefit of any Law relating to Insolvent Debtors, or becomes a public Defaulter :
- (4.) If he is attainted of Treason or convicted of Felony or of any infamous Crime :
- (5.) If he ceases to be qualified in respect of Property or of Residence; provided, that a Senator shall not be deemed to have ceased to be qualified in respect of Residence by reason only of his residing at the Seat of the Government of Canada while holding an Office under that Government requiring his Presence there. [Art. 31.]

**§ 158. Upper House : — Choice ; — Resignations.**

**Canada.** — A Senator may by Writing under his Hand addressed to the Governor General resign his Place in the Senate, and thereupon the same shall be vacant. [Art. 30.]

**§ 159. Upper House : — Choice ; — Proving elections.**

**Canada.** — If any Question arises respecting the Qualification of a Senator or a Vacancy in the Senate the same shall be heard and determined by the Senate. [Art. 33.]

**United States.** — *Proving elections of members of either House :* § 107.

**§ 160. Upper House : — Choice ; — Term.**

**Canada.** — A Senator shall, subject to the Provisions of this Act, hold his Place in the Senate for Life. [Art. 29.]

**United States.** — [Senators shall be chosen] for six years; . . . [Art. I, Sec. 3, § 1.]

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one-third may be chosen every second Year; . . . [*Art. I, Sec. 3, § 2.*]

**§ 161. Upper House:—Members;—Compensation.**

**Switzerland.**—Representatives in the Council of States receive a compensation from the Cantons. [*Art. 83.*]

**United States.**—*Compensation of members of either House: § 109.*

**§ 162. Upper House:—Members;—Diplomatic protection.**

**Germany.**—The Emperor shall afford the customary diplomatic protection to the members of the Federal Council. [*Art. 10.*]

**§ 163. Upper House:—Members;—Instructions.**

**Germany.**—Votes not represented or not instructed shall not be counted. [*Art. 7, § 5.*]

**Switzerland.**—*No instructions for members of either House: § 111.*

**§ 164. Upper House:—Members;—Speaking in lower House.**

**Germany.**—Each member of the Federal Council shall have the right to appear in the Diet, and be heard there at any time he shall so request, to represent the views of his Government, even when the same shall not have been adopted by the majority of the Council. [*Art. 9.*]

**§ 165. Upper House:—Organization;—Officers.**

**Canada.**—The Governor General may from Time to Time, by Instrument under the Great Seal of Canada, appoint a Senator to be Speaker of the Senate, and may remove him and appoint another in his Stead. [*Art. 34.*]

**Germany.**—The Chancellor of the Empire, to be appointed by the Emperor, shall preside in the Federal Council, and supervise the conduct of its business.

The Chancellor of the Empire shall have the right to delegate the power to represent him to any member of the Federal Council. This delegation must be made in writing. [*Art. 15.*]

**Switzerland.**—The Council of States chooses out of its own number for each regular or extraordinary session a President and a Vice-President.

Neither the President nor the Vice-President can be chosen from among the representatives of the Canton from which the President has been chosen for the regular session next preceding.

Representatives of the same Canton cannot occupy the position of Vice-President during two consecutive regular sessions. [*Art. 82.*]

**United States.**—The Vice President of the United States shall be President of the Senate, but . . . [*Art. I, Sec. 3, § 4.*]

The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States. [*Art. I, Sec. 3, § 5.*]

**§ 166. Upper House:—Sessions;—Summons.**

*Summons of either House: § 114.*

**Germany.**—The convocation of the Federal Council shall take place whenever demanded by one-third of the total number of votes. [*Art. 14.*]

**§ 167. Upper House:—Procedure;—Committees.**

**Germany.**—The Federal Council shall appoint from its own members Permanent Committees.

1. On the army and the fortifications.
2. On marine affairs.
3. On duties and taxes.
4. On commerce and trade.
5. On railroads, posts and telegraphs.
6. On affairs of justice.
7. On accounts.

In each of these Committees there shall be representatives of at least four States of the Confederation, besides the Presidium, and each State shall be entitled to only one vote in the same. In the committee on the army and fortifications, Bavaria shall have a permanent seat; the remaining members of it, as well as the members of the Committee on marine affairs, shall be appointed by the Emperor; the members of the other Committees shall be elected by the Federal Council. These Committees shall be newly formed at each session of the Federal Council, *i.e.*, each year. The retiring members shall, however, again be eligible.

There shall also be appointed in the Federal Council a Committee on Foreign Affairs, over which Bavaria shall preside, to be composed of the plenipotentiaries of the Kingdoms of Bavaria, Saxony and Wurtemberg, and of two plenipotentiaries of other States of the Empire, who shall be elected annually by the Federal Council.

The necessary employees and officials shall be placed at the disposal of the Committees. [*Art. 8.*]

*Special power of the Committee on the army and the fortifications: § 428.*

**§ 168. Upper House:—Procedure;—Manner of voting.**

**Germany.**— . . . but the votes of each State must be cast as a unit. [*Art. 6.*]

**United States.**— . . . and each Senator shall have one Vote. [*Art. I, Sec. 3, § 1.*]

**§ 169. Upper House:—Procedure;—Quorum.**

*Quorum in either House: § 121.*

**Canada.**—Until the Parliament of Canada otherwise provides, the Presence of at least Fifteen Senators, including the Speaker, shall be necessary to constitute a Meeting of the Senate for the Exercise of its Powers. [*Art. 35.*]

**§ 170. Upper House:—Procedure;—Majority.**

**Canada.**—Questions arising in the Senate shall be decided by a Majority of Voices, and the Speaker shall in all Cases have a Vote, and when the Voices are equal the Decision shall be deemed to be in the Negative. [*Art. 36.*]

**Germany.**—Legislative action shall take place by simple majority, with the exceptions of the provisions in Articles 5, 37 and 78.

When legislative action is taken upon a subject which according to the provisions of this Constitution does not concern the whole Empire, the votes only of those States of the Confederation interested in the matter in question shall be counted. [*Art. 7, § 5.*]

**Switzerland.**—*Majority in either House: § 122.*

**§ 171. Upper House:—Procedure;—Tie vote.**

**Germany.**—In the case of a tie, the vote of the *presidium* shall decide. [*Art. 7, § 5.*]

**Switzerland.**—When the votes are equally divided the President has a casting vote; in elections he votes in the same manner as the other members. [*Art. 82, § 4.*]

**United States.**—[The Vice President] shall have no Vote, unless they be equally divided. [*Art. I, Sec. 3, § 4.*]

**§ 172. Upper House:—Powers;—Initiative.**

**Germany.**—Each member of the Confederation shall have the right to make propo-

sitions and introduce motions, and it shall be the duty of the *presidium* to submit them for deliberation. [Art. 7, § 4.]

**Switzerland.**—*Initiative of either House*: § 177.

**§ 173. Upper House:—Powers;—Share in legislation.**

*Consensus of both Houses*: § 180.

**Germany.**—The Federal Council shall take action upon—

The measures to be proposed to the Diet, and the resolutions passed by the same.

[Art. 7, § 1.]

**§ 174. Upper House:—Powers;—Executive.**

*Ratification of treaties*: § 416.

**Germany.**—*Consent to a declaration of war*: § 424.

*Power to dissolve the Diet*: § 133.

*Power to order an execution against a State*: § 455.

[The Federal Council shall take action upon] The general provisions and arrangements necessary for the execution of the laws of the Empire, so far as no other provision is made by law. [Art. 7, § 2.]

The defects which may be discovered in the execution of the laws of the Empire, or of the provisions and arrangements heretofore mentioned. [Art. 7, § 3.]

**§ 175. Upper House:—Powers;—Judicial.**

**United States.**—The Senate shall have the sole Power to try all Impeachments.

When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present. [Art. I, Sec. 3, § 6.] *Penalty in impeachment*: § 327.

## PROCESS OF LEGISLATION.

**Canada.**—MONEY VOTES; ROYAL ASSENT. [Title IV, Sub-title 3.]

**§ 176. Process of legislation:—Executive initiative.**

*Reports by the executive head*: § 241.

**Germany.**—The necessary bills shall be laid before the Diet in the name of the Emperor, in accordance with the resolutions of the Federal Council, and these shall be advocated in the Diet by members of Federal Council, or by special commissioners appointed by the said Council. [Art. 16.]

**Switzerland.**—[The Federal Council at each regular session] calls attention to the measures which it deems desirable for the promotion of the general welfare. [Art. 102, § 16.]

It [the Federal Council] introduces bills or resolutions into the Federal Assembly, and gives its opinion upon the proposals submitted to it by the Councils or the Cantons. [Art. 102, § 4.]

*Right of members of the Federal Council to speak in either House*: § 242.

**United States.**—[The President shall from time to time] recommend to their [Congresses] Consideration such Measures as he shall judge necessary and expedient; [Art. II, Sec. 3.]

**§ 177. Process of legislation:—Legislative initiative.**

*Initiative in lower House*: § 148. *Initiative in upper House*: § 172.

**Switzerland.**—Measures may originate in either Council, and may be introduced by any of their members. [Art. 93, § 1.]

**§ 178. Process of legislation:—State initiative.**

**Switzerland.**—The Cantons may by correspondence exercise the same right.

[*Art. 93, § 2.*]

*State initiative in amendments: § 456.*

**§ 179. Process of legislation:—Initiative in money bills.**

**Canada.**—Bills for appropriating any Part of the Public Revenue, or for imposing any Tax or Impost, shall originate in the House of Commons. [*Art. 53.*]

It shall not be lawful for the House of Commons to adopt or pass any Vote, Resolution, Address, or Bill for the Appropriation of any Part of the Public Revenue, or of any Tax or Impost, to any Purpose that has not been first recommended to that House by Message of the Governor General in the Session in which such Vote, Resolution, Address, or Bill is proposed. [*Art. 54.*]

**United States.**—All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills. [*Art. I, Sec. 7, § 1.*]

**§ 180. Process of legislation:—Consensus of both Houses.**

**Germany.**—A majority of the votes of both bodies shall be necessary and sufficient for the passage of a law. [*Art. 5, § 1.*]

**Switzerland.**—Federal laws, enactments, and resolutions shall be passed only by the agreement of the two Councils. [*Art. 89.*]

**§ 181. Process of legislation:—Joint action of both Houses.**

**Switzerland.**—Each Council takes action separately. But in the case of the elections specified in Article 85, § 4, of pardons, or of deciding a conflict of jurisdiction (*Art. 85, § 13*), the two Councils meet in joint session, under the direction of the President of the National Council, and a decision is made by the majority of the members of both Councils present and voting. [*Art. 92.*]

**United States.**—Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill. [*Art. I, Sec. 7, § 3.*]

**§ 182. Process of legislation:—Presentation to the Executive.**

**Canada.**—Where a Bill passed by the Houses of the Parliament is presented to the Governor General for the Queen's Assent, he shall declare, according to his Discretion, but subject to the Provisions of this Act and to Her Majesty's Instructions, either that he assents thereto in the Queen's Name, or that he withholds the Queen's Assent, or that he reserves the Bill for the Signification of the Queen's Pleasure. [*Art. 55.*]

**United States.**—Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; [*Art. I, Sec. 7, § 2.*]

**§ 183. Process of legislation:—Executive approval.**

**Canada.**—Where the Governor General assents to a Bill in the Queen's Name, he shall by the first convenient Opportunity send an authentic Copy of the Act to One of Her Majesty's Principal Secretaries of State, . . . [*Art. 56.*]

**United States.**—If he [the President] approve, he shall sign it, . . . [*Art. I, Sec. 7, § 2.*]

**§ 184. Process of legislation:—Executive disapproval.**

**Germany.**—When a law is proposed in relation to the army, or navy, or to the

imposts specified in Article 35, the vote of the *presidium* shall decide in case of a difference of opinion in the Federal Council, if said vote be in favor of the retention of existing arrangements. [Art. 5, § 2.]

**United States.** — . . . but if not he [the President] shall return it, with his Objections to that House in which it shall have originated, . . . [Art. I, Sec. 7, § 2.]

**§ 185. Process of legislation: — Reconsideration of vetoed bills.**

**United States.** — . . . who [that House in which the bill shall have originated] shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. [Art. I, Sec. 7, § 2.]

**§ 186. Process of legislation: — Failure to sign.**

**United States.** — If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law. [Art. I, Sec. 7, § 2.]

**§ 187. Process of legislation: — Reservation.**

**Canada.** — A Bill reserved for the Signification of the Queen's Pleasure shall not have any Force unless and until within Two Years from the Day on which it was presented to the Governor General for the Queen's Assent, the Governor General signifies, by Speech or Message to each of the Houses of the Parliament or by Proclamation, that it has received the Assent of the Queen in Council. [Art. 57, § 1.]

An Entry of every such Speech, Message, or Proclamation shall be made in the Journal of each House, and a Duplicate thereof duly attested shall be delivered to the proper Officer to be kept among the Records of Canada. [Art. 57, § 2.]

**§ 188. Process of legislation: — Disallowance by a superior authority.**

**Canada.** — . . . and if the Queen in Council within Two Years after Receipt thereof by the Secretary of State thinks fit to disallow the Act, such Disallowance (with a Certificate of the Secretary of State of the Day on which the Act was received by him) being signified by the Governor General, by Speech or Message to each of the Houses of the Parliament or by Proclamation, shall annul the Act from and after the Day of such Signification. [Art. 56.]

**§ 189. Process of legislation: — Popular vote upon laws.**

**Switzerland.** — Federal laws shall be submitted for acceptance or rejection by the people, if the demand is made by 30,000 voters or by eight Cantons. The same principle applies to federal resolutions which have a general application, and which are not of an urgent nature. [Art. 89, § 2.]

The Confederation shall by law establish the forms and intervals to be observed in popular votes. [Art. 90.]

*Application of the popular vote to amendments: §§ 456, 457.*

**§ 190. Process of legislation: — Going into effect.**

**Canada.** — *Official language of the acts: § 305.*

**Germany.** — The laws of the Empire shall be rendered binding by Imperial proclamation, such proclamation to be published in a journal devoted to the publication of the laws of the Empire (*Reichsgesetzblatt* — Imperial Gazette). If no other period shall be

designated in the published law for it to take effect, it shall take effect on the fourteenth day after its publication in the Imperial Gazette at Berlin. [*Art. 2.*]

## POWERS OF THE LEGISLATIVE DEPARTMENT.

**Canada.** — POWERS OF THE PARLIAMENT. [*Title VI, Sub-title 1.*]

**Switzerland.** — C. POWERS OF THE FEDERAL ASSEMBLY. [*Chapter II, Title I, Sub-title C.*]

### § 191. Legislative powers: — Enumeration.

**Canada.** — . . . and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say: — [*Art. 91.*]

**Germany.** — The following matters shall be under the supervision and legislative control of the Empire: [*Art. 4.*]

**Switzerland.** — The subjects within the competence of the two Councils are particularly the following: [*Art. 85.*]

**United States.** — The Congress shall have Power . . . [*Art. I, Sec. 8, § 1.*]

### § 192. Legislative powers: — Supervisory.

*Division of powers between the nation and States: §§ 271-280.*

*Control of federal elections: § 106.*

**Switzerland.** — *Superintendence of administration: §§ 263-269.*

### § 193. Legislative powers: — Territorial.

*Admission of States: § 282.*

**United States.** — *Regulation of territory: § 284.*

*Acceptance of a federal district: § 285.*

*Government of a federal district: § 285. Government of forts and sites: § 286.*

### § 194. Legislative powers: — Over citizens.

*Status of citizens: §§ 290, 402. Status of aliens: § 295.*

*Enforcement of State citizenship: §§ 69, 290, 301, 308.*

*Naturalization: § 291. Regulation of aborigines: § 294.*

*Establishment of civil and criminal law: §§ 331-335.*

*Enforcement of education in the States: § 343.*

**Germany.** — *Conditions of emigration: § 292.*

**Switzerland.** — *Status of Heimathlosen: § 291.*

*Deprivation of political rights: § 293.*

*Regulating the exercise of the suffrage in Cantons: § 315.*

*Regulation of religious bodies: §§ 339-341. Higher education: § 344.*

**United States.** — *Removal of disabilities of former rebels: § 319.*

*Place of trial fixed by Congress: § 323.*

### § 195. Legislative powers: — Financial.

*Auditing accounts: § 346. Control of expenses: § 350.*

*Taxation: § 352-354. Assessing requisitions: § 358. Fixing salaries: § 374.*

*Customs duties: § 359. Excise duties: § 363. Borrowing money: § 367.*

*Currency and coinage: § 399. Banks: § 404. Legal tender: § 405.*

### § 196. Legislative powers: — Commercial.

*Legislation on commercial law: § 331, 332, 255, 402.*

*General control of commerce: § 375. Shipping and navigation: §§ 377, 378.*



*Special control of foreign commerce* : § 376. *Internal improvements* : § 384.

*Immigration and emigration* : § 380. *Interstate commerce* : § 383.

*Control of railways* : §§ 385, 387-390. *Construction of railways* : § 386.

*Establishment of post-offices and telegraphs* : §§ 392-398. *Coinage* : § 399.

*Weights and measures* : § 400. *Collection of debts and bankruptcy* : § 410.

*Patents and copyrights* : § 401. *Banks and paper money* : § 404.

*Legal tender* : § 405. *Insurance* : § 407. *Census* : § 408.

**Canada.** — *Fisheries* : § 379. *Agriculture* : § 410.

**Germany.** — *Management of railways* : §§ 387-390.

**Switzerland.** — *Gunpowder monopoly* : § 403.

### § 197. Legislative powers: — Foreign.

**Germany.** — *Ratification of treaties involving affairs subject to national legislation* : § 416.

**Switzerland.** — *Measures for external safety and international relations* : § 411.

*Making treaties* : § 415. *Approval of cantonal treaties* : § 421.

### § 198. Legislative powers: — Military.

*General authority over military matters* : § 423.

*Declaration of war* : § 424. *Military codes* : § 438.

*Administering the army* : §§ 425, 428. *Providing a navy* : § 441.

**Switzerland.** — *Control of the federal army* : § 429.

*Choice of commander in chief* : § 429.

### § 199. Legislative powers: — Police.

*Medical and veterinary matters* : § 447. *Marriage* : § 312.

**Canada.** — *Divorce* : § 313.

**Switzerland.** — *Suppression of lotteries* : § 444.

*Protection of laborers* : § 445. *Game laws* : § 446.

*Keeping records of civil status* : § 314.

*Regulation of the practice of a profession* : § 449.

### § 200. Legislative powers: — Enforcement.

*Maintenance of order* : § 453. *Federal intervention* : § 454.

**Switzerland.** — *Measures for preserving the Constitution* : § 452.

### § 201. Legislative powers: — Amendment.

*Right to propose amendments* : § 456.

**Germany.** — *Right to make amendments* : § 456.

## LIMITATIONS ON THE POWERS OF THE LEGISLATIVE DEPARTMENT.

### § 202. Limitations on legislation: — Rights of citizens.

*Freedom of association* : § 299. *Freedom of petition* : § 300.

*Free speech and press* : § 298.

*Use of official languages assured* : § 305. *Civil equality assured* : § 306.

*No establishment of religion* : § 336. *No religious tests* : § 337.

*Public schools to be non-sectarian* : § 345.

**Switzerland.** — *No person to be deprived of his constitutional judges* : § 321.

*No death penalty for a political crime* : § 333.

*No corporal punishment* : § 333. *Free exercise of religion assured* : § 338.

**United States.** — *Retention of non-delegated powers by the people* : § 276.

*No slavery to exist* : § 297. *Right of keeping and bearing arms assured* : § 302

*No quartering of soldiers* : § 303. *No arbitrary search or seizure* : § 304.

*No trial without indictment :* § 322. *No excessive punishments :* § 328.  
*No deprivation of life, liberty or property, without due process of law :* § 326.  
*Habeas Corpus not to be suspended, except in exigencies :* § 330.  
*No bill of attainder or ex-post-facto law :* § 329.  
*No conviction for treason, except . . . :* § 333.

**§ 203. Limitations on legislation: — Financial.**

*Budget and accounts :* § 346. *Taxing power limited :* § 354.  
*Gradual extinction of State taxes :* § 356. *Sums to be voted to the States :* § 372.  
*Appropriation for a limited period :* § 371.

**Canada.** — *Succession of financial charges :* § 373.

**Switzerland.** — *Principles regulating the collection of customs :* § 362.

*States permitted to collect liquor duties :* § 364.

**United States.** — *Payment of pre-existing debt guaranteed :* § 369.

*Payment of war debt guaranteed :* § 369. *Claims for rebel debt excluded :* § 370.

**§ 204. Limitations on legislation: — Commercial.**

*No discrimination as to ports :* §§ 376–378.

**Germany.** — *No discrimination as to the use of water ways :* § 383.

**Switzerland.** — *Postal rates to be fair :* § 397.

*Secrecy of the post to be observed :* § 398.

**§ 205. Limitations on legislation: — Military.**

**Germany.** — *Strength of the standing army fixed till a certain date :* § 425.

**Switzerland.** — *No standing army in time of peace :* § 425.

*Bodies of troops usually not to be formed out of soldiers of different Cantons :* § 434.

**United States.** — *No appropriation for military purposes for more than two years :* § 442.

**RELATIONS OF THE LEGISLATIVE WITH OTHER DEPARTMENTS.**

**§ 206. Legislative department: — Relations with the Executive.**

*Relations of the Executive with the Legislature :* §§ 241–244.

**Switzerland.** — *Election of the Federal Council :* § 214.

*Election of President of the Confederation and Vice-President of the Federal Council :* § 225.

*Election of the Chancellor :* § 227. *Election of the Commander in Chief :* § 429.

[Within the competence of the two Councils are] The superintendence of federal administration and . . . [Art. 85, § 11.]

**§ 207. Legislative department: — Relations with the Judiciary.**

*Relations of the Judiciary with the Legislature :* § 269.

*Creation of a Supreme Court :* § 247. *Creation of inferior courts :* § 248.

**Switzerland.** — *Election of the Federal Court :* § 251.

*Supervision of the courts :* § 263.

**THE EXECUTIVE DEPARTMENT.**

**Canada.** — III. EXECUTIVE POWER. [Title III.]

IX. MISCELLANEOUS PROVISIONS. [Title IX.]

**Germany.** — IV. THE PRESIDENCY. [Title IV.]

**Switzerland.** — ii. FEDERAL COUNCIL. [CONSEIL FÉDÉRAL; BUNDESRATH.] [Chapter II, Title ii.]

V. MISCELLANEOUS PROVISIONS. [Chapter II, Title v.]

## THE EXECUTIVE HEAD.

§ 208. **Executive head:—In whom vested.**

**Canada.**—The Executive Government and Authority of and over Canada is hereby declared to continue and be vested in the Queen. [*Art. 9.*]

The Provisions of this Act referring to Her Majesty the Queen extend also to the Heirs and Successors of Her Majesty, Kings and Queens of the United Kingdom of Great Britain and Ireland. [*Art. 2.*]

The Provisions of this Act referring to the Governor General extend and apply to the Governor General for the Time being of Canada, or other the Chief Executive Officer or Administrator for the Time being carrying on the Government of Canada on behalf and in the Name of the Queen, by whatever Title he is designated. [*Art. 10.*]

**Germany.**—To the King of Prussia shall belong the Presidency of the Confederation, and he shall have the title of German Emperor. [*Art. 11, § 1.*]

**Switzerland.**—The supreme direction and executive authority of the Confederation is exercised by a Federal Council, composed of seven members. [*Art. 95.*]

**United States.**—The executive Power shall be vested in a President of the United States of America. [*Art. II, Sec. 1, § 1.*]

§ 209. **Executive:—Choice;—Qualifications of electors.**

*General qualifications of federal voters: §§ 315, 316, 319.*

§ 210. **Executive:—Choice;—Qualifications.**

**Switzerland.**—The members of the Federal Council are chosen from among all the Swiss citizens eligible to the National Council. But not more than one member of the Federal Council shall be chosen from the same Canton. [*Art. 96, § 1.*]

The members of the Federal Council shall not, during their term of office, occupy any other office, either in the service of the Confederation or in a Canton, or follow any other pursuit, or exercise a profession. [*Art. 97.*]

**United States.**—No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States. [*Art. II, Sec. 1, § 4.*]

§ 211. **Executive:—Choice;—Of electors.**

**United States.**—[The President shall] together with the Vice President, chosen for the same Term, be elected, as follows [*Art. II, Sec. 1, § 1.*]

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector. [*Art. II, Sec. 1, § 2.*]<sup>1</sup>

§ 212. **Executive:—Choice;—By electors.**

**United States.**—The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate; [*Amendment XII.*]

<sup>1</sup> The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States. [*Art. II, Sec. 1, § 4.*]

**§ 213. Executive: — Choice; — Count of votes.**

**United States.** — The President of the Senate shall, in presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; — The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; [*Amendment XII.*]

**§ 214. Executive: — Choice; — By legislature.**

**Switzerland.** — [The members of the Federal Council are chosen] by the Councils in joint session. [*Art. 96, § 1.*]

[Within the competence of the Councils are] the election of the Federal Council. [*Art. 85, § 4.*] *Choice of Federal Council by the Federal Assembly: § 210.*

**United States.** — . . . and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States. [*Amendment XII.*]

**§ 215. Executive: — Choice; — Vacancies.**

**Switzerland.** — Vacancies which occur in the course of the three years are filled at the first ensuing session of the Federal Assembly, for the remainder of the term of office. [*Art. 96, § 3.*]

**United States.** — In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation, or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected. [*Art. II, Sec. 1, § 5.*]

**§ 216. Executive: — Choice; — Deputy.**

**Canada.** — It shall be lawful for the Queen, if Her Majesty thinks fit, to authorize the Governor General from Time to Time to appoint any Person or any Persons jointly or severally to be his Deputy or Deputies within any Part or Parts of Canada, and in that Capacity to exercise during the Pleasure of the Governor General such of the Powers, Authorities, and Functions of the Governor General as the Governor General deems it necessary or expedient to assign to him or them, subject to any Limitations or Directions expressed or given by the Queen; but the Appointment of such a Deputy or Deputies shall not affect the Exercise by the Governor General himself of any Power, Authority, or Function. [*Art. 14.*]

**United States.** — *The Vice President: § 215.*

**§ 217. Executive: — Choice; — Term of office.**

**Switzerland.**— [The members of the Federal Council are chosen] for three years.

[*Art. 96, § 1.*]

The Federal Council is chosen anew after each election of the National Council.

[*Art. 96, § 2.*]

**United States.**— He [the President] shall hold his Office during the Term of four Years, and . . . [*Art. II, Sec. 1, § 1.*]

**§ 218. Executive: — Removal.**

**United States.**— The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors. [*Art. II, Sec. 4.*]

**§ 219. Executive: — Compensation.**

**Switzerland.**— The President of the Confederation and the other members of the Federal Council receive an annual salary from the federal treasury. [*Art. 99.*]

**United States.**— The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them. [*Art. II, Sec. 1, § 6.*]

**§ 220. Executive: — Privileges; — Protection.**

**Germany.**— *Protection by the Courts:* § 257.

**§ 221. Executive: — Oath.**

**United States.**— Before he [the President] enter on the Execution of his Office, he shall take the following Oath or Affirmation: — “I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States.” [*Art. II, Sec. 1, § 7.*]

**ORGANIZATION OF THE EXECUTIVE DEPARTMENT.**

**§ 222. Executive: — Organization; — Cabinet.**

**Canada.**— There shall be a Council to aid and advise in the Government of Canada, to be styled the Queen's Privy Council for Canada; and the Persons who are to be Members of that Council shall be from Time to Time chosen and summoned by the Governor General and sworn in as Privy Counsellors, and Members thereof may be from Time to Time removed by the Governor General. [*Art. 11.*]

The Provisions of this Act referring to the Governor General in Council shall be construed as referring to the Governor General acting by and with the Advice of the Queen's Privy Council for Canada. [*Art. 13.*]

**Germany.**— *The Chancellor of the Empire:* §§ 165, 229, 346.

**Switzerland.**— The business of the Federal Council is distributed by departments among its members. This distribution has the purpose only of facilitating the examination and despatch of business; decisions emanate from the Federal Council as a single authority. [*Art. 103.*]

**United States.**— . . . he [the President] may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, . . . [*Art. II, Sec. 2, § 1.*]

**§ 223. Executive: — Organization; — Expert advice.**

**Switzerland.**— The Federal Council and its departments have power to call in experts on special subjects. [*Art. 104.*]

**§ 225. Executive : — Organization ; — Officers.**

*Manner of appointment :* §§ 214, 231.

**Switzerland.** — The Federal Council is presided over by the President of the Confederation. There is a Vice-President.

The President of the Confederation and the Vice-President of the Federal Council are chosen for one year by the Federal Assembly from among the members of the Council.

The retiring President shall not be chosen as President or Vice-President for the year ensuing.

The same member shall not hold the office of Vice-President during two consecutive years. [*Art. 98.*]

**§ 226. Executive : — Organization ; — Quorum.**

**Switzerland.** — A quorum of the Federal Council consists of four members. [*Art. 100.*]

**§ 227. Executive : — Organization ; — Chancery.**

**Germany.** — *The Chancellor :* § 165.

*Chancellor's signature for decrees and ordinances :* § 229.

**Switzerland.** — iii. FEDERAL CHANCERY. [CHANCELLERIE FÉDÉRALE ; BUNDESKANZLEI.] [*Chapter II, Title iii.*]

A Federal Chancery, at the head of which is placed the Chancellor of the Confederation, conducts the secretary's business for the Federal Assembly and the Federal Council. [*Art. 105.*]

And [within the competence of the two Councils is the election] of the Chancellor, . . . [*Art. 85, § 4.*]

The Chancellor is chosen by the Federal Assembly for the term of three years, at the same time as the Federal Council.

The Chancery is under the special supervision of the Federal Council.

A federal law shall provide for the organization of the Chancery. [*Art. 105.*]

**POWERS OF THE EXECUTIVE DEPARTMENT.**

**§ 228. Executive powers : — General.**

**Canada.** — All Powers, Authorities, and Functions which under any Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of Upper Canada, Lower Canada, Canada, Nova Scotia, or New Brunswick, are at the Union vested in or exercisable by the respective Governors or Lieutenant Governors of those Provinces, with the Advice, or with the Advice and Consent, of the respective Executive Councils thereof, or in conjunction with those Councils, or with any Number of Members thereof, or by those Governors or Lieutenant Governors individually, shall, as far as the same continue in existence and capable of being exercised after the Union in relation to the Government of Canada, be vested in and exercisable by the Governor General, with the Advice or with the Advice and Consent of or in conjunction with the Queen's Privy Council for Canada, or any Members thereof, or by the Governor General individually, as the Case requires, subject nevertheless (except with respect to such as exist under Acts of the Parliament of Great Britain or of the Parliament of the United Kingdom of Great Britain and Ireland) to be abolished or altered by the Parliament of Canada. [*Art. 12.*]

**Switzerland.** — The powers and the duties of the Federal Council, within the limits of this Constitution, are particularly the following :

1. It conducts federal affairs, conformably to the laws and resolutions of the Confederation. [*Art. 102, § 1.*]

**§ 229. Executive powers: — Ordinance.**

**Germany.** — The decrees and ordinances of the Emperor shall be made in the name of the Empire, and require for their validity the signature of the Imperial Chancellor, who thereby takes upon himself the responsibility for them. [*Art. 17.*]

*Ordinances by the Federal Council: § 174.*

**§ 230. Executive powers: — Administration.**

**Switzerland.** — It [the Federal Council] administers the military establishment of the Confederation, and all other branches of administration committed to the Confederation. [*Art. 102, § 12.*]

**§ 231. Executive powers: — Appointment.**

**Canada.** — Until the Parliament of Canada otherwise provides, the Governor General in Council may from Time to Time appoint such Officers as the Governor General in Council deems necessary or proper for the effectual Execution of this Act. [*Art. 131.*]

**Germany.** — The Emperor shall appoint imperial officials, require them to take the oath of allegiance to the Empire, and dismiss them when necessary. [*Art. 18, § 1.*]

*Appointment of postal officials: § 395.*

**Switzerland.** — It [the Federal Council] makes those appointments which are not assigned to the Federal Assembly, Federal Court, or other authority. [*Art. 102, § 6.*]

**United States.** — . . . and he [the President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: [*Art. II, Sec 2, § 2.*]

. . . and shall Commission all the Officers of the United States. [*Art. II, Sec. 3.*]

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session. [*Art. II, Sec. 2, § 3.*] *Disqualification of certain former rebels: § 319.*

**§ 232. Executive powers: — Appointment; — Status of state officers.**

**Canada.** — Until the Parliament of Canada otherwise provides, all Officers of the several Provinces having Duties to discharge in relation to Matters other than those coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces shall be Officers of Canada, and shall continue to discharge the Duties of their respective Offices under the same Liabilities, Responsibilities, and Penalties as if the Union had not been made. [*Art. 130.*]

[In each Province the Legislature may exclusively make laws in relation to] The Establishment and Tenure of Provincial Offices and the Appointment and Payment of Provincial Officers. [*Art. 92, § 4.*]

**Germany.** — *Salaried officials of a state must vacate seats in the Diet: § 126.*

Officials of any one of the States of the Confederation, who shall be appointed to any imperial office, shall enjoy the same rights as those to which they are entitled in their native States by virtue of their official position, provided no other legislative provision shall have been made previous to their entrance into the service of the Empire. [*Art. 13, § 2.*]

**United States.** — *Disqualification of certain former rebels: § 319.*

**§ 233. Executive powers: — Appointment; — Provision by law.**

**Switzerland.** — [Within the competence of the two Councils are] The salary and compensation of members of the federal governing bodies and of the Federal Chancery; the creation of federal offices and the determination of salaries therefor. [*Art. 85, § 3.*]

The Confederation may by law assign to the Federal Assembly other powers of election or of confirmation. [*Art. 85, § 4.*]

**United States.** — . . . but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments. [*Art. II, Sec. 2, § 2.*]

**§ 234. Executive powers: — Appointment; — Responsibility of officials.**

**Switzerland.** — The officials of the Confederation are responsible for their conduct in office. A federal law shall enforce this responsibility. [*Art. 117.*]

It [the Federal Council] supervises the conduct of all the officials and employees of the federal administration. [*Art. 102, § 15.*]

**§ 235. Executive powers: — Territorial.**

**Canada.** — *Admission of colonies:* § 282. *Changing seat of government:* § 285.

**§ 236. Executive powers: — Financial and commercial.**

**Germany.** — *Power of the presidium on alterations of excise and customs:* § 363.

*Administration of postal finances:* § 394. *Appointment of postal officials:* § 395.

**Switzerland.** — *Administration of finances:* § 346.

**United States.** — *No money to be drawn except by law:* § 371.

**§ 237. Executive powers: — Foreign.**

*General change of foreign relations:* § 411.

*Receiving and accrediting ambassadors:* § 412. *Negotiating treaties:* § 415.

**Germany.** — *Making certain treaties:* § 415. *Supervision of consular affairs:* § 413.

**Switzerland.** — *Intermediary of Cantonal negotiations with foreign powers:* § 419.

*Examination of intercantonal treaties:* § 278.

**§ 238. Executive powers: — Military.**

*Command of the army:* § 429.

*Call of troops in case of exigency:* §§ 429, 438. *Appointment of officers:* § 430.

**Germany.** — *Declaration of war with consent of Federal Council:* § 424.

*Organization of the army:* § 433. *Transfer of officers:* § 430.

*Declaring martial law:* § 439. *Special change of the navy:* § 441.

*Carrying out military executions:* § 455.

**§ 239. Executive powers: — Execution of laws.**

**Germany.** — [It shall be the duty of the Emperor] to supervise their [the laws of the Empire] execution. [*Art. 17.*]

**Switzerland.** — It [the Federal Council] takes care that the Constitution, federal laws and ordinances, and also the provisions of federal concordats, be observed; upon its own initiative or upon complaint, it takes measures necessary to cause these instruments to be observed, unless the consideration of redress be among the subjects which should be brought before the Federal Court, according to Article 113. [*Art. 102, § 2.*]

It executes the laws and resolutions of the Confederation and the judgments of the Federal Court, and also . . . [*Art. 102, § 5.*]

**United States.** — . . . he [the President] shall take Care that the Laws be faithfully executed, . . . [*Art. II, Sec. 3.*]

**§ 240. Executive powers: — Protection of States.**

**Switzerland.** — *Federal Council watches over the guaranty of Cantonal Constitutions:* § 70. *Intervention to protect a State:* § 454.

## RELATIONS OF THE EXECUTIVE WITH OTHER DEPARTMENTS.

**§ 241. Executive relations with Legislature: — Reports.**

**Switzerland.** — It [the Federal Council] submits to the Federal Assembly at each regular session an account of its administration and a report of the condition of the Confederation, internal as well as external, and . . .



It also makes special reports when the Federal Assembly or either Council requires it. [*Art. 102, § 16.*]

**United States.**—He [the President] shall from time to time give to the Congress Information of the State of the Union, and . . . [*Art. II, Sec. 3.*]

**§ 242. Executive relations with Legislature:—Speaking.**

**Germany.**—*Right of members of the Federal Council to speak in the Diet: § 164.*

**Switzerland.**—The members of the Federal Council have the right to speak but not to vote in either house of the Federal Assembly, and also the right to make motions on the subject under consideration. [*Art. 101.*]

**§ 243. Executive relations with Legislature:—Sessions.**

*Convocation by the Executive head: § 114.*

*Adjournment by the Executive head: § 114.*

*Dissolution by the Executive head: §§ 133, 134.*

**§ 244. Executive relations with Legislature:—Share in legislation.**

*Reports: § 176. Initiative: § 176. Approval of bills: § 183.*

*Disapproval of bills: § 184. General relations of Legislature with Executive: § 206.*

**Canada.**—*Reservation of bills: § 187.*

**Germany.**—*Special veto on army, navy, and customs: § 184.*

*Salaried officials not to sit in the Diet: § 126.*

It shall be the duty of the Emperor to prepare and publish the laws of the Empire, and . . . [*Art. 17.*]

*Proclamation of the going into effect of laws: § 190.*

**United States.**—*Failure to sign bills: § 186.*

**§ 245. Executive relations with the Judiciary.**

*Appointment of judges: § 231. Pardon: § 246.*

*Judicial functions in constitutional law: § 260.*

**Switzerland.**—*Judicial functions in administrative law: § 263.*

**§ 246. Executive relations with the Judiciary:—Pardon.**

**Switzerland.**—[Within the competence of the two Councils are] amnesty and pardon. [*Art. 85, § 7.*]

**United States.**— . . . and he [the President] shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment. [*Art. II, Sec. 2, § 1.*]

## THE JUDICIARY DEPARTMENT.

**Canada.**—VII. JUDICATURE. [*Title VII.*]

**Germany.**—XIII. SETTLEMENT OF DISPUTES AND PENAL PROVISIONS. [*Title XIII.*]

**Switzerland.**—iv. FEDERAL COURT. [TRIBUNAL FÉDÉRAL; BUNDESGERICHT.] [*Chapter II, Title iv.*]

## ESTABLISHMENT OF THE JUDICIARY.

**§ 247. Judiciary:—Establishment;—Supreme Court.**

**Canada.**—The Parliament of Canada may, notwithstanding anything in this Act, from Time to Time, provide for the Constitution, Maintenance, and Organization of a General Court of Appeal for Canada, and . . . [*Art. 101.*]

**Germany.**—For those offences specified in Article 74 against the German Empire, which, if committed against one of the States of the Empire, would be deemed high trea-

son, the superior Court of Appeals of the three free Hanseatic towns at Lübeck shall be the competent deciding tribunal in the first and last resort.

More definite provisions as to the competency and the procedure of the Superior Court of Appeals shall be made by imperial law. [*Art. 75.*]

**Switzerland.** — There shall be a Federal Court for the administration of justice in federal concerns. [*Art. 106.*]

A law shall establish the organization of the Federal Court and of its sections, the number of judges and alternates, their term of office, and their salary. [*Art. 107.*]

**United States.** — The judicial Power of the United States, shall be vested in one supreme Court, and . . . [*Art. III, Sec. 1.*]

#### § 248. Judiciary: — Establishment; — Inferior Courts.

**Canada.** — [The Parliament of Canada may provide] for the Establishment of any additional Courts for the better Administration of the Laws of Canada. [*Art. 101.*]

**United States.** — [The judicial Power of the United States shall *[also]* be vested] in such inferior Courts as the Congress may from time to time ordain and establish. [*Art. III, Sec. 1.*]

[Congress shall have power] To constitute Tribunals inferior to the supreme Court; . . . [*Art. I, Sec. 8, § 9.*]

#### § 249. Judiciary: — Establishment; — Temporary provisions.

**Germany.** — Until the passage of a law of the Empire, the existing competency of the courts in the respective States of the Empire, and the provisions relative to the procedure of those courts, shall remain in force. [*Art. 75, § 2.*]

**Switzerland.** — The new provisions relating to the organization and jurisdiction of the Federal Court take effect only after the publication of federal laws thereon. [*Temporary provisions, Art. 3.*]

#### § 250. Judiciary: — Choice; — Qualifications.

**Switzerland.** — Any Swiss citizen eligible to the National Council may be chosen to the Federal Court.

The members of the Federal Assembly and of the Federal Council, and officials appointed by those authorities, shall not at the same time belong to the Federal Court.

The members of the Federal Court shall not, during their term of office, occupy any other office, either in the service of the Confederation or in a Canton, nor engage in any other pursuit, nor practice a profession. [*Art. 108.*]

#### § 251. Judiciary: — Choice; — Manner.

*Appointment of judges: § 231.*

**Switzerland.** — [Within the competence of the two Councils are the election of] the Federal Court. [*Art. 85, § 4.*]

The members and alternates of the Federal Court shall be chosen by the Federal Assembly, which shall take care that all three national languages are represented therein. [*Art. 107.*]

#### § 252. Judiciary: — Choice; — Term.

**Switzerland.** — *Establishment of the term by law: § 247.*

**United States.** — The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, . . . [*Art. III, Sec. 1.*]

#### § 253. Judiciary: — Compensation.

**Switzerland.** — *Compensation of judges by a law: § 247.*

**United States.** — . . . and [the Judges] shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office. [*Art. III, Sec. 1.*]

**§ 254. Judiciary:—Organization.**

**Switzerland.**—The Federal Court organizes its own Chancery and appoints the officials thereof. [*Art. 109.*]

**JURISDICTION OF THE JUDICIARY DEPARTMENT.****§ 255. Judiciary:—Jurisdiction;—General.**

**Switzerland.**—Besides the cases specified in Articles 110, 112, and 113, [*involving States of the Union,*] the Confederation may by law place other matters within the jurisdiction of the Federal Court; in particular, it may give to that court powers intended to insure the uniform application of the [*commercial*] laws provided for in Article 64. [*Art. 114.*]

**United States.**—The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;— . . . [*Art. III, Sec. 2, § 1.*]

**§ 256. Judiciary:—Jurisdiction;—Civil.**

**Switzerland.**—The Federal Court is bound to give judgment in other cases when both parties agree to abide by its decision, and when the amount involved is of a degree of importance to be determined by federal legislation. [*Art. 111.*]

**§ 257. Judiciary:—Jurisdiction;—Criminal.**

**Germany.**—*Legislation on criminal law: § 333.*

Every attempt against the existence, the integrity, the security, or the Constitution of the German Empire; finally, any offence committed against the Federal Council, the Diet, a member of the Federal Council, or of the Diet, a magistrate or a public official of the Empire, while in the execution of their duty, or with reference to their official position, by word, writing, printing, drawing, pictorial or other representations, shall be judged and punished in the several States of the Empire according to the laws therein existing, or which shall hereafter exist in the same, by which provision is made for the judgment of similar offences against any one of the States of the Empire, its constitution, legislature or estates, members of its legislature or its estates, authorities, or officials. [*Art. 74.*]

**Switzerland.**—The Federal Court, assisted by a jury to decide upon questions of fact, has criminal jurisdiction in:

1. Cases of high treason against the Confederation, of rebellion or violence against federal authorities.
2. Crimes and misdemeanors against the law of nations.
3. Political crimes and misdemeanors which are the cause or the result of disturbances which occasion armed federal intervention.
4. Cases against officials appointed by a federal authority, where such authority delegates them to the Federal Court. [*Art. 112.*]

**United States.**—No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court. [*Art. III, Sec. 3, § 1.*]

**§ 258. Judiciary department:—Jurisdiction;—Involving national or state governments.**

**Switzerland.**—The Federal Court has jurisdiction in civil suits:

1. Between the Confederation and the Cantons.
2. Between the Confederation on one part and corporations or individuals on the other part, when such corporations or individuals are plaintiffs, and when the amount involved is of a degree of importance to be determined by federal legislation.

3. Between Cantons.

4. Between Cantons on one part and corporations or individuals on the other part, when one of the parties demands it, and the amount involved is of a degree of importance to be determined by federal legislation. [*Art. 110.*]

**United States.** — [The judicial Power of the United States shall extend] to Controversies to which the United States shall be a Party; — to Controversies between two or more States; — between a State and Citizens of another State; — between Citizens of different States, — between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects. [*Art. III, Sec. 2, § 1.*]

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State. [*Amendment XI.*]

**§ 259. Judiciary: — Jurisdiction; — Constitutional, — Between the Union and States.**

**Switzerland.** — The Federal Court further has jurisdiction:

1. Over conflicts of jurisdiction between federal authorities on one part and cantonal authorities on the other part. [*Art. 113.*]

**§ 260. Judiciary: — Jurisdiction; — Constitutional, — Between States.**

**Germany.** — Disputes between the different States of the Union, so far as they are not of a private nature, and therefore to be decided by the competent judicial authorities, shall be settled by the Federal Council, at the request of one of the parties. [*Art. 76, § 1.*]

**Switzerland.** — In case of differences arising between Cantons, the States shall abstain from violence and from arming themselves; they shall submit to the decision to be taken upon such differences by the Confederation. [*Art. 14.*]

[The Federal Council executes] the compromises or decisions in arbitration upon disputes between Cantons. [*Art. 102, § 5.*]

[The Federal Court has jurisdiction over] Disputes between Cantons, when such disputes are upon questions of public law. [*Art. 113, § 2.*]

**§ 261. Judiciary: — Jurisdiction; — State constitutional law.**

**Germany.** — In disputes relating to constitutional matters in those States of the Union whose Constitution does not designate an authority for the settlement of such differences, the Federal Council shall, at the request of one of the parties, attempt to bring about an adjustment, and if this cannot be done, the matter shall be settled by imperial law. [*Art. 76, § 2.*]

**Switzerland.** — It [the Federal Court] further has jurisdiction in suits concerning the status of persons not subjects of any government (*heimathlosat*), and the conflicts which arise between Communes of different Cantons respecting the right of local citizenship. [*Droit de cité.*] [*Art. 110.*]

**§ 262. Judiciary: — Jurisdiction; — Constitutional, — Violation of personal rights by States.**

**Germany.** — If in one of the States of the Union justice shall be denied, and no sufficient relief can be procured by legal measures, it shall be the duty of the Federal Council to receive substantiated complaints concerning denial or restriction of justice, which are to be judged according to the constitution and the existing laws of the respective States of the Union, and thereupon to obtain judicial relief from the State Government which shall have given occasion to the complaint. [*Art. 77.*]

**Switzerland.**—[The Federal Court has jurisdiction over] Complaints of violation of the constitutional rights of citizens, and complaints of individuals for the violation of concordats or treaties. [*Art. 113, § 3.*]

**§ 263. Judiciary: — Jurisdiction; — Administrative.**

**Switzerland.**—Conflicts of administrative jurisdiction are reserved, and are to be settled in a manner prescribed by federal legislation. [*Art. 113, § 4.*]

[Within the competence of the two Councils are] Protests against the decisions of the Federal Council upon administrative conflicts. (*Art. 113.*) [*Art. 85, § 12.*]

Conflicts of jurisdiction between federal authorities. [*Art. 85, § 13.*]

**§ 264. Judiciary: — Jurisdiction: — International law.**

**Switzerland.**—*Crimes against the law of nations*: § 257.

**United States.**—[The judicial Power shall extend] to all Cases affecting Ambassadors, other public Ministers and Consuls; — to all Cases of admiralty and maritime Jurisdiction; — . . . [*Art. III, Sec. 2, § 1.*]

**§ 265. Judiciary: — Jurisdiction; — Original and appellate.**

**United States.**—In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make. [*Art. III, Sec. 2, § 2.*]

**§ 266. Judiciary: — Jurisdiction: — Interpretation.**

**Switzerland.**—In all the fore-mentioned cases the Federal Court shall apply the laws passed by the Federal Assembly and those resolutions of the Assembly which have a general import. It shall in like manner conform to treaties which shall have been ratified by the Federal Assembly. [*Art. 113, § 5.*]

**§ 267. Judiciary: — Jurisdiction; — Reservation to States.**

*General reservations*: §§ 76, 89. *State judgments to be reciprocally allowed*: § 80. *Continuance of state courts till national courts are provided*: § 76.

**§ 268. Judiciary: — Jurisdiction; — Limitations.**

*Trial by jury secured*: § 324.

**Switzerland.**—*No extraordinary tribunal*: § 321.

*Legal competency established by law*: § 320.

**United States.**—*Place of trial ascertained by Congress*: § 323.

*Fair criminal proceedings secured*: § 325. *No excessive punishments*: § 328.

*Special provisions as to treason*: §§ 328, 333.

*Special power as to impeachment*: §§ 151, 175, 324, 327.

**RELATIONS OF THE JUDICIARY WITH OTHER DEPARTMENTS.**

**§ 269. Judiciary: — Relations with the Legislature.**

*Relations of Legislature with Judiciary*: § 207.

**Switzerland.**—[Within the competence of the two Councils is the superintendence] of federal courts. [*Art. 85, § 11.*] *To be no extraordinary tribunal*: § 321.

**§ 270. Judiciary: — Relations with the Executive.**

*Relations of Executive with the Judiciary*: § 245.

## PART IV.

### THE POWERS OF GOVERNMENT.

#### DIVISION OF POWERS BETWEEN THE UNION AND THE STATES.

**Canada.**—VI. DISTRIBUTION OF LEGISLATIVE POWERS. [*Title VI.*]

**Switzerland.**—CHAPTER I. GENERAL PROVISIONS. [*Chapter I.*]

TEMPORARY PROVISIONS. [*After Chapter III.*]

§ 271. — **Division of powers:—General authority of the Union.**

**Canada.**—It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces: [*Art. 91.*]

**Germany.**—Within this territory the Empire shall exercise the right of legislation according to the provisions of this Constitution; . . . [*Art. 2.*]

**Switzerland.**—The National Council and the Council of States consider all the subjects which the present Constitution places within the competence of the Confederation, and which are not assigned to any other federal authority. [*Art. 84.*]

[Within the competence of the two Councils are] Laws and ordinances on subjects which by the Constitution are placed within the federal competence. [*Art. 85, § 2.*]

§ 272. **Division of powers:—Express grants;—To the Union.**

*Legislative powers:* §§ 191–201. *Executive powers:* §§ 228–240.

*Judicial powers:* §§ 255–266.

§ 273. **Division of powers:—Implied grants;—To the Union.**

**United States.**—[The Congress shall have Power] To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof. [*Art. I, Sec. 8, § 18.*]

§ 274. **Division of powers:—Express reservations;—To the States.**

*Powers of the State enumerated in the Constitution:* §§ 86–97.

§ 275. **Division of powers:—Non-enumerated powers;—Retained by the Union.**

**Canada.**—[It shall be lawful for the Queen, by and with the advice and consent of the Senate and House of Commons, to make Laws in relation to] Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces. [*Art. 91, § 29.*]

§ 276. **Division of powers:—Non-enumerated powers;—Retained by the States.**

**Switzerland.**—The Cantons are sovereign, so far as their sovereignty is not limited by the Federal Constitution; and, as such, they exercise all the rights which are not delegated to the federal government. [*Art. 3.*]

*Reservation of rights of Cantons as against the Federal Assembly:* § 105.

**United States.**—The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. [*Amendment X.*]

**§ 277. Division of powers:—Precedence of national laws.**

**Canada.**—And any Matter coming within any of the Classes of Subjects enumerated in this Section shall not be deemed within the Class of Matters of a local or private Nature comprised in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces. [*Art. 91, § 30.*]

**Germany.**— . . . and the laws of the Empire shall take precedence of those of each individual State. [*Art. 2.*]

**Switzerland.**—The provisions of the federal laws and of the cantonal concordats, constitutions or cantonal laws, which are contrary to this Constitution, cease to have effect by the adoption of the Constitution or the publication of the laws for which it provides. [*Temporary Provisions, Art. 2.*]

**United States.**—This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. [*Art. VI, § 2.*]

**§ 278. Division of powers:—Supervision of State governments.**

**Switzerland.**—It [the Federal Council] examines such laws and ordinances of the Cantons as must be submitted for its approval; it exercises supervision over such departments of the cantonal administration as are placed under its control. [*Art. 102, § 13.*]

It examines the treaties made by Cantons with each other, or with foreign powers, and approves them, if proper. (Art. 85, § 5.) [*Art. 102, § 7.*]

**§ 279. Division of powers:—Limitations;—On the Union.**

*Limitations on the Legislative power: §§ 202-205.*

*Limitations on the Executive power: §§ 228-231.*

*Limitations on the Judicial power: § 268.*

**§ 280. Division of powers:—Limitations;—On the States.**

*Limitations expressed in the Constitution: §§ 98-104.*

## TERRITORIAL POWERS.

**Germany.**—I. TERRITORY. [*Title I.*]

**§ 281. Territorial powers:—Original territory.**

**Canada.**—Canada shall be divided into Four Provinces, named Ontario, Quebec, Nova Scotia, and New Brunswick. [*Art. 5.*]

The Parts of the Province of Canada (as it exists at the passing of this Act) which formerly constituted respectively the Provinces of Upper Canada and Lower Canada shall be deemed to be severed, and shall form Two separate Provinces. The Part which formerly constituted the Province of Upper Canada shall constitute the Province of Ontario; and the Part which formerly constituted the Province of Lower Canada shall constitute the Province of Quebec. [*Art. 6.*]

The Provinces of Nova Scotia and New Brunswick shall have the same Limits as at the passing of this Act. [*Art. 7.*]

**Germany.**—The territory of the Confederation shall consist of the States of Prussia (with Lauenburg), Bavaria, Saxony, Wurtemberg, Baden, Hesse, Mecklenburg-Schwerin, Saxe-Weimar, Mecklenburg-Strelitz, Oldenburg, Brunswick, Saxe-Meiningen, Saxe-Alten-

burg, Saxe-Coburg-Gotha, Anhalt, Schwarzburg-Rudolstadt, Schwarzburg-Sondershausen, Waldeck, Reuss (elder branch), Reuss (younger branch), Schaumburg-Lippe, Lippe, Lubeck, Bremen, and Hamburg. [*Art. 1.*]

**Switzerland.** — The peoples of the twenty-two sovereign Cantons of Switzerland, united by this present alliance, viz.:

Zurich, Bern, Luzern, Uri, Schwyz, Unterwalden (Upper and Lower), Glarus, Zug, Freiburg, Solothurn, Basel (urban and rural), Schaffhausen, Appenzell (the two Rhodes), St. Gallen, Grisons, Aargau, Thurgau, Ticino, Vaud, Valais, Neuchâtel, and Geneva, form in their entirety the SWISS CONFEDERATION. [*Art. 1.*]

*Guaranty of state territory:* § 70.

**United States.** — *List of states whose delegates signed the Constitution:* § 65.

## § 282. Territorial powers: — Admission of States.

**Canada.** — XI. ADMISSION OF OTHER COLONIES. [*Title XI.*]

It shall be lawful for the Queen, by and with the Advice of Her Majesty's Most Honourable Privy Council, on Addresses from the Houses of the Parliament of Canada, and from the Houses of the respective Legislatures of the Colonies or Provinces of Newfoundland, Prince Edward Island, and British Columbia, to admit those Colonies or Provinces, or any of them, into the Union, and on Address from the Houses of the Parliament of Canada to admit Rupert's Land and the North-western Territory, or either of them, into the Union, on such Terms and Conditions in each Case as are in the Addresses expressed and as the Queen thinks fit to approve, subject to the Provisions of this Act; and the Provisions of any Order in Council in that Behalf shall have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland. [*Art. 146.*]

**United States.** — New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress. [*Art. II, Sec. 3, § 1.*]

## § 283. Territorial powers: — Customs frontiers.

**Germany.** — Germany shall form a Customs and Commercial Union, having a common frontier for the collection of duties. Such territories as cannot, by reason of their situation, be suitably embraced within the said frontier, shall be excluded. [*Art. 33.*]

The Hanseatic cities, Bremen and Hamburg, shall remain free ports outside of the common boundary of the Customs Union, retaining for that purpose a suitable district of their own, or of the surrounding territory, until they shall request to be admitted into the said Union. [*Art. 34.*]

## § 284. Territorial powers: — Administration of territory.

**United States.** — The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State. [*Art. II, Sec. 3, § 2.*]

## § 285. Territorial powers: — Seat of government.

**Canada.** — Until the Queen otherwise directs the Seat of Government of Canada shall be Ottawa. [*Art. 16.*]

**Switzerland.** — All that relates to the location of the authorities of the Confederation is a subject for federal legislation. [*Art. 115.*]

**United States.** — [The Congress shall have Power:] To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may,



by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, . . . [Art. I, Sec. 8, § 17.]

**§ 286. Territorial powers:—Sites of national buildings and works.**

**Canada.**—The Public Works and Property of each Province, enumerated in the Third Schedule to this Act, shall be the Property of Canada. [Art. 108.]

PROVINCIAL PUBLIC WORKS AND PROPERTY TO BE THE PROPERTY OF CANADA.  
[The Third Schedule: text omitted.]

The several Provinces shall retain all their respective Public Property not otherwise disposed of in this Act, subject to the Right of Canada to assume any Lands or Public Property required for Fortifications or for the Defence of the Country. [Art. 117.]

*Beacons, Buoys, Light-houses, and Sable Island:* § 377.

**Germany.**—The right to construct fortresses within the territory of the Empire shall belong to the Emperor, who shall ask (according to Section 12) for the appropriation of the means required for that purpose, if not already included in the regular appropriation. [Art. 65.] *Imperial war harbors:* § 441.

**Switzerland.**—On payment of a reasonable indemnity, the Confederation has the right to use or acquire drill-grounds and buildings intended for military purposes, within the Cantons, together with the appurtenances thereof.

The terms of the indemnity shall be settled by federal legislation. [Art. 22.]

**United States.**— . . . and [The Congress shall have Power] to exercise like [exclusive] Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And . . . [Art. I, Sec. 8, § 17.]

**§ 287. Territorial powers:—Public lands.**

**Canada.**—*Control of Indian lands:* § 294.

*Control of lands and mines by the Provinces:* §§ 286, 289.

**United States.**—*Rules for territory or other property:* § 284.

**§ 288. Territorial powers:—Expropriation.**

*Right of expropriation for public works:* §§ 286, 384.

**§ 289. Territorial powers:—Reservation to States.**

**Canada.**—*Possession of local public works:* § 286.

All Lands, Mines, Minerals, and Royalties belonging to the several Provinces of Canada, Nova Scotia, and New Brunswick at the Union, and all Sums then due or payable for such Lands, Mines, Minerals, or Royalties, shall belong to the several Provinces of Ontario, Quebec, Nova Scotia, and New Brunswick in which the same are situate or arise, subject to any Trusts existing in respect thereof, and to any Interest other than that of the Province in the same. [Art. 109.]

[In each Province the Legislature may exclusively make Laws in relation to] The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon. [Art. 92, § 5.]

**United States.**—*Claims of the States not to be prejudiced:* § 284.

## POWER OVER CITIZENS.

## STATUS OF THE CITIZEN.

**§ 290. Power over citizens: — Status; — Endowment with citizenship.**

**Germany.** — There shall be a common citizenship (*Indigenat*) for all Germany, . . . [Art. 3.]

[Under the supervision and legislative control of the Empire shall be] the right of citizenship; . . . [Art. 4, § 1.]

**Switzerland.** — Every citizen of a Canton is a Swiss citizen. [Art. 43, § 1.]

*Guaranty of the rights of citizens: § 69. Status of the wife of a citizen: § 312.*

**United States.** — All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. [Amendment XIV, Sec. 1.]

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article. [Amendment XIV, Sec. 5.]

**§ 291. Power over citizens: — Status; — Naturalization.**

**Canada.** — [The exclusive Legislative authority of the Parliament extends to] Naturalization and . . . [Art. 91, § 25.]

**Switzerland.** — Federal legislation shall fix the conditions upon which foreigners may be naturalized, as well as those . . . [Art. 44.]

Measures are taken by federal law for the incorporation of persons without country (*Heimathlosen*), and for the prevention of new cases of that nature. [Art. 68.]

**United States.** — [The Congress shall have Power] To establish an uniform Rule of Naturalization, . . . [Art. I, Sec. 8, § 4.]

**§ 292. Power over citizens: — Status; — Emigrants.**

**Germany.** — . . . and [under the supervision and legislative control of the Empire shall be] finally matters relating to colonization and emigration to foreign countries. [Art. 4, § 1.] *Emigration of men liable to military service: § 436.*

**§ 293. Power over citizens: — Status; — Loss of citizenship.**

**Switzerland.** — [Federal legislation shall fix the conditions] upon which a Swiss may give up his citizenship in order to obtain naturalization in a foreign country. [Art. 44.]

No Canton shall expel from its territory one of its own citizens, nor deprive him of his rights, whether acquired by birth or settlement. [*Origine ou cité.*] [Art. 44, § 1.]

Every expulsion on account of poverty must be approved by the government of the Canton of domicile, and previously announced to the government of the Canton of origin. [Art. 45, § 5.]

**United States.** — *Effect of impeachment: § 327. Effect of rebellion: § 319.*

**§ 294. Power over citizens: — Status; — Aborigines.**

**Canada.** — [The exclusive Legislative Authority of the Parliament extends to] Indians and Lands reserved for the Indians. [Art. 91, § 24.]

**United States.** — . . . and [the Congress shall have power to regulate Commerce] with the Indian tribes; [Art. I, Sec. 8, § 3.]

**§ 295. Power over citizens: — Status; — Aliens.**

**Canada.** — [The exclusive Legislative Authority of the Parliament extends to] Aliens. [Art. 91, § 25.]

**Germany.** — [Under the supervision and legislative control of the Empire shall be] surveillance of foreigners; . . . [Art. 4, § 1.]

**Switzerland.**—The Confederation has power to expel from its territory foreigners who endanger the internal or external safety of Switzerland. [*Art. 70.*]

The exit duty on property is abolished as respects foreign countries, provided reciprocity be observed. [*Art. 63.*] *Special jurisdiction over Heimathlosen*: § 261.

### CIVIL RIGHTS OF THE CITIZEN.

#### § 296. Power over citizens:—Rights;—General guaranty.

**Switzerland.**—*Rights reserved from the Federal Assembly*: § 105.

*General guaranty of rights within the states*: § 70. *Protection of laborers*: § 446.

**United States.**—The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people. [*Amendment IX.*]

*Reservation of rights not so granted to the Union*: § 276.

#### § 297. Power over citizens:—Civil rights;—Personal freedom.

**United States.**—Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. [*Amendment XIII, Sec. 1.*]

Congress shall have power to enforce this article by appropriate legislation. [*Amendment XIII, Sec. 2.*]

*The government not to pay for any slave*: § 370.

*Former condition of servitude not to deprive of suffrage*: § 319.

#### § 298. Power over citizens:—Civil rights;—Freedom of speech and the press.

**Germany.**—[Under the supervision and legislative control of the Empire shall be] Laws relating to the press, and . . . [*Art. 4, § 16.*]

**Switzerland.**—The freedom of the press is guaranteed.

Nevertheless the Cantons by law enact the measures necessary for the suppression of abuses. Such laws are submitted for the approval of the Federal Council.

The Confederation may enact penalties for the suppression of press offenses directed against it or its authorities. [*Art. 55.*]

**United States.**—Congress shall make no law abridging the freedom of speech, or of the press; or . . . [*Amendment I.*]

#### § 299. Power over citizens:—Civil rights;—Freedom of association.

**Germany.**—[Under the supervision and legislative control of the Empire shall be laws relating] to the right of association. [*Art. 4, § 16.*]

**Switzerland.**—Citizens have the right of forming associations, provided that there be in the purpose of such associations, or in the means which they employ, nothing unlawful or dangerous to the state. The Cantons by law take the measures necessary for the suppression of abuses. [*Art. 56.*]

**United States.**—[Congress shall make no law abridging] the right of the people peaceably to assemble, and . . . [*Amendment I.*]

#### § 300. Power over citizens:—Civil rights;—Freedom of petition.

**Switzerland.**—The right of petition is guaranteed. [*Art. 57.*]

**United States.**—[Congress shall make no law abridging the right of the people] to petition the Government for a redress of grievances. [*Amendment I.*]

#### § 301. Power over citizens:—Civil rights;—Equal protection of the laws.

**United States.**— . . . nor [shall any State] deny to any person within its jurisdiction the equal protection of the laws. [*Amendment XIV, Sec. 1.*]

**§ 302. Power over citizens: — Civil rights; — Keeping and bearing arms.**

**United States.** — A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed. [*Amendment II.*]

**§ 303. Power over citizens: — Civil rights; — No soldiers to be quartered.**

**United States.** — No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law. [*Amendment III.*]

**§ 304. Power over citizens: — Civil rights; — Freedom from unreasonable search.**

**United States.** — The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. [*Amendment IV.*]

**§ 305. Power over citizens: — Civil rights; — Official languages.**

**Canada.** — Either the English or the French Language may be used by any Person in the Debates of the Houses of the Parliament of Canada and of the Houses of the Legislature of Quebec; and both those Languages shall be used in the respective Records and Journals of those Houses; and either of those Languages may be used by any Person or in any Pleading or Process in or issuing from any Court of Canada established under this Act, and in or from all or any of the Courts of Quebec.

The Acts of the Parliament of Canada and of the Legislature of Quebec shall be printed and published in both those Languages. [*Art. 133.*]

**Switzerland.** — The three principal languages spoken in Switzerland, German, French, and Italian, are national languages of the Confederation. [*Art. 116.*]

*Reference to official languages in election of judges: § 251.*

**§ 306. Power over citizens: — Civil rights; — Civil equality.**

**Switzerland.** — All Swiss are equal before the law. In Switzerland there are neither political dependents, nor privileges of place, birth, persons, or families. [*Art. 4.*]

No members of the departments of the federal government, civil and military officials of the Confederation, or federal representatives or commissioners, shall receive from any foreign government any pension, salary, title, gift, or decoration.

Such persons, already in possession of pensions, titles, or decorations, must renounce the enjoyment of pensions and the bearing of titles and decorations during their term of office.

Nevertheless, inferior officials may be authorized by the Federal Council to continue in the receipt of pensions.

No decoration or title conferred by a foreign government shall be borne in the federal army.

No officer, non-commissioned officer, or soldier shall accept such distinction. [*Art. 12.*]

**United States.** — No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State. [*Art. I, Sec. 9, § 8.*]

No State shall . . . grant any Title of Nobility. [*Art. I, Sec. 10, § 1.*]

**§ 307. Power over citizens:—Civil rights;—Of citizens of one State in another State.**

**Germany.**—[The members of each State shall in every other State have the right] of filling public offices; of obtaining citizenship, and of enjoying all other civil rights on the same conditions as those born in the State, and shall also have the same usage as regards civil and criminal prosecutions and the protection of the laws. [*Art. 3, § 1.*]

**Switzerland.**—All the Cantons are bound to treat the citizens of the other confederated States like those of their own State in legislation and in all judicial proceedings. [*Art. 60.*]

**United States.**—The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States. [*Art. IV, Sec. 2, § 1.*]

**§ 308. Power over citizens:—Civil rights;—Residence in any State.**

**Germany.**— . . . and the members (citizens or subjects) of each State of the Confederation shall be treated in every other State thereof as natives, and shall consequently have the right of becoming permanent residents; of carrying on business; of acquiring real estate; . . . [*Art. 3, § 1.*]

[Under the supervision and legislative control of the Empire shall be] Regulations relating to migration within the Empire; matters of domicile and settlement; the issuing and examination of passports; . . . [*Art. 4, § 1.*]

**Switzerland.**—Every Swiss citizen has the right to settle anywhere in Swiss territory, on condition of submitting a certificate of origin, or a similar document. [*Art. 45, § 1.*]

A federal law shall establish the distinction between settlement and temporary residence, and shall at the same time make the regulations to which Swiss temporary residents shall be subjected as to their political rights and their civil rights. [*Art. 47.*]

**§ 309. Power over citizens:—Civil rights;—No general limitations on settlement.**

**Germany.**—No German shall be limited in the exercise of this privilege by the authorities of his native State, or by the authorities of any other State of the Confederation. [*Art. 3, § 2.*]

**Switzerland.**—A Canton in which a Swiss establishes his domicile may not require security, nor impose any special obligations for such establishment. In like manner the Communes cannot require from Swiss domiciled in their territory other contributions than those which they require from their own subjects. [*Art. 45, § 6.*]

Cantonal laws relating to the right of Swiss citizens to settle outside the Cantons in which they were born, and to vote on communal questions, are submitted for the approval of the Federal Council. [*Art. 43, § 6.*]

**United States.**—No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; . . . [*Amendment XIV, Sec. 1.*]

**§ 310. Power over citizens:—Civil rights;—Special limitations on settlement.**

**Switzerland.**—A federal law shall establish the maximum fee to be paid the Chancery for a permit to settle. [*Art. 45, § 7.*]

By exception, settlement may be *refused* to or *withdrawn* from, those who, in consequence of a penal conviction, are not entitled to civil rights.

In addition, settlement may be *withdrawn* from those who have been repeatedly punished for serious offenses, and also from those who permanently come upon the charge of public charity, and to whom their Commune or Canton of origin, as the case may be, refuses sufficient succor, after they have been officially asked to grant it.

In the Cantons where the poor are relieved in their place of residence the permission

to settle, if it relates to citizens of the Canton, may be coupled with the condition that they shall be able to work, and that they shall not, in their former domicile in the Canton of origin, have permanently become a charge on public charity. [*Art. 45, §§ 2-4.*]

**§ 311. Power over citizens: — Civil rights; — Poor relief.**

*Withdrawal of settlement from paupers: § 310. Interstate relations: § 83.*

**§ 312. Power over citizens: — Civil rights; — Marriage.**

**Canada.** — [Within the exclusive Legislative Authority of the Parliament are] Marriage and . . . [*Art. 91, § 26.*]

[In each Province the Legislature may exclusively make Laws in relation to] Sol-  
emnization of Marriage in the Province. [*Art. 92, § 12.*]

**Switzerland.** — The right of marriage is placed under the protection of the Confed-  
eration.

No limitation upon marriage shall be based upon sectarian grounds, nor upon the poverty of either of the contractants, nor on their conduct, nor on any other considera-  
tion of good order.

A marriage contracted in a Canton or in a foreign country, conformably to the law which is there in force, shall be recognized as valid throughout the Confederation.

By marriage the wife acquires the citizenship of her husband.

Children born before the marriage are made legitimate by the subsequent marriage of their parents.

No tax upon admission or similar tax shall be levied upon either party to a marriage.  
[*Art. 54.*]

**§ 313. Power over citizens: — Civil rights; — Divorce.**

**Canada.** — [Within the exclusive Legislative Authority of the Parliament are] Divorce. [*Art. 91, § 26.*]

**§ 314. Power over citizens: — Civil rights; — Records of civil status.**

**Switzerland.** — The civil status and the keeping of records thereof is subject to the civil authority. The Confederation shall by law enact detailed provisions upon this subject. [*Art. 53, § 1.*]

## POLITICAL RIGHTS OF THE CITIZEN.

**§ 315. Power over citizens: — Political rights; — Suffrage.**

*Loss of the suffrage: § 319.*

**Switzerland.** — Every Swiss who has completed twenty years of age, and who in addition is not excluded from the rights of a voter by the legislation of the Canton in which he is domiciled, has the right to vote in elections and popular votes.

Nevertheless, the Confederation by law may establish uniform regulations for the exercise of such right. [*Art. 74.*]

As such [a Swiss citizen] he may participate, in the place where he is domiciled, in all federal elections and popular votes, after having duly proven his qualification as a voter.

No person can exercise political rights in more than one Canton. [*Art. 43.*]

**United States.** — . . . and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature. [*Art. I, Sec. 2, § 1.*]

*Suffrage not to be affected by race, color, or previous condition of servitude: § 319.*

**§ 316. Power over citizens: — Political rights; — Eligibility to office.**

**Switzerland.** — *Eligibility to the Lower House: § 125.*

*Eligibility to Judicial office: § 250.*

**United States.** — *Disqualification for participation in rebellion: § 319.*

**§ 317. Power over citizens:—Political rights;—Of a person who has settled.**

**Switzerland.**—The Swiss settled as a citizen outside his native Canton enjoys, in the place where he is domiciled, all the rights of the citizens of the Canton, including all the rights of the communal citizen. Participation in municipal and corporate property, and the right to vote upon purely municipal affairs, are excepted from such rights, unless the Canton by legislation has otherwise provided.

In cantonal and communal affairs, he gains the right to vote after a residence of three months. [*Art. 43, §§ 4, 5.*]

**§ 318. Power over citizens:—Political rights;—To protection abroad.**

**Germany.**—All Germans in foreign countries shall have equal claims upon the protection of the Empire. [*Art. 3, § 6.*]

**§ 319. Power over citizens:—Political rights;—Loss.**

**Switzerland.**—The Confederation by law fixes the limits within which a Swiss citizen may be deprived of his political rights. [*Art. 66.*]

**United States.**—The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

The Congress shall have power to enforce this article by appropriate legislation. [*Amendment XV.*]

No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability. [*Amendment XIV, Sec. 3.*]

## JUDICIAL RIGHTS OF THE CITIZEN.

**§ 320. Power over citizens:—Judicial rights;—To sue and be sued.**

**Switzerland.**—The Confederation has power to make laws:

On legal competency. [*Art. 64, § 1.*]

**§ 321. Power over citizens:—Judicial rights:—Courts.**

**Germany.**—*Treason cases tried by special state courts: § 247.*

**Switzerland.**—No person shall be deprived of his constitutional judge. Therefore no extraordinary tribunal shall be established.

Ecclesiastical jurisdiction is abolished. [*Art. 58.*]

**§ 322. Power over citizens:—Judicial rights;—Indictment.**

**United States.**—No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; . . . [*Amendment V.*]

**§ 323. Power over citizens:—Judicial rights;—Place of trial.**

**United States.**— . . . and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed. [*Art. III, Sec. 2, § 3.*]

. . . which district shall have been previously ascertained by law, . . . [*Amendment VI.*]

**§ 324. Power over citizens: — Judicial rights; — Trial by jury.**

**Switzerland.** — There shall be, moreover, a jury for criminal cases. (Art. 112.) [*Art. 106, § 2.*] *Form of the Federal Jury: § 257.*

**United States.** — The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; . . . [*Art. III, Sec. 2, § 3.*]

. . . by an impartial jury of the State and district wherein the crime shall have been committed, . . . [*Amendment VI.*]

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law. [*Amendment VII.*]

**§ 325. Power over citizens: — Judicial rights; — Procedure.**

**United States.** — In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence. [*Amendment VI.*]

. . . nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, . . . [*Amendment V.*]

**§ 326. Power over citizens: — Judicial rights; — Due process of law.**

**United States.** — . . . nor [shall any person] be deprived of life, liberty, or property, without due process of law; [*Amendment V.*]

. . . nor shall any State deprive any person of life, liberty, or property, without due process of law; [*Amendment XIV, Sec. 1.*]

. . . nor shall private property be taken for public use, without just compensation. [*Amendment V.*]

**§ 327. Power over citizens: — Judicial rights; — Impeachment.**

**United States.** — *Presentation of charges by the House: § 151.*

*No jury trial: § 324. Judgment by the Senate: § 175.*

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law. [*Art. I, Sec. 3, § 7.*]

**§ 328. Power over citizens: — Judicial rights; — Penalties.**

**United States.** — The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted. [*Art. III, Sec. 3, § 2.*]

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. [*Amendment VIII.*]

**§ 329. Power over citizens: — Judicial rights; — Bills of attainder and ex post facto laws.**

**United States.** — No Bill of Attainder or ex post facto Law shall be passed. [*Art. I, Sec. 9, § 3.*]

[No State shall] pass any Bill of Attainder, ex post facto Law, or . . . [*Art. I, Sec. 10, § 1.*]



**§ 330. Power over citizens: — Judicial rights; — Habeas Corpus.**

**Germany.** — *Declaration of martial law*: § 439.

**United States.** — The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it. [*Art. I, Sec. 9, § 2.*]

**ESTABLISHMENT OF LEGAL RELATIONS.****§ 331. Power over citizens: — Legal relations; — General.**

**Germany.** — [Under the supervision and legislative control of the Empire shall be] Uniform legislation as to the whole domain of civil and criminal law, including legal procedure. [*Art. 4, § 13, as amended December 20, 1873.*]

**§ 332. Power over citizens: — Legal relations; — Commercial.**

*Commercial jurisdiction*: §§ 255, 256. *Collection of bills*: § 409.

*General regulation of trade and commerce*: §§ 375-377.

*Interstate commercial relations*: § 383. *Control of business*: §§ 402-407.

**§ 333. Power over citizens: — Legal relations; — Criminal.**

*Jurisdiction in criminal cases*: § 257.

**Canada.** — [The exclusive Legislative Authority of Parliament extends to] The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters. [*Art. 91, § 27.*]

The Establishment, Maintenance, and Management of Penitentiaries. [*Art. 91, § 28.*]

**Switzerland.** — No death penalty shall be pronounced for a political crime. [*Art. 65, Amendment of June 20, 1879.*]

Corporal punishment is abolished. [*Art. 65.*]

Imprisonment for debt is abolished. [*Art. 59.*]

**United States.** — [The Congress shall have Power] To provide for the Punishment of counterfeiting the Securities and current Coin of the United States; . . . [*Art. I, Sec. 8, § 6.*]

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations; . . . [*Art. I, Sec. 8, § 10.*]

Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. [*Art. III, Sec. 3, § 1.*]

*Proof of treason*: § 328.

**§ 334. Power over citizens: — Legal relations; — State criminal law.**

**Canada.** — [In each Province the Legislature may exclusively make Laws in relation to] The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section. [*Art. 92, § 15.*]

The Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province. [*Art. 92, § 6.*]

**§ 335. Power over citizens: — Legal relations; — Military law.**

*Make-up of the army*: § 434. *Discipline of troops*: § 438. *Martial law*: § 439.

*Military service required*: §§ 435-437, 441. *Exemptions*: § 435.

**Germany.** — *Term of service*: § 436.

**Switzerland.** — *Pensions*: § 437.

## RELIGION AND RELIGIOUS RIGHTS.

**§ 336. Power over citizens: — Religion; — No establishment.**

**Switzerland.** — Freedom of conscience and belief is inviolable.

No person can be constrained to take part in a religious society, to attend religious instruction, to perform a religious rite, or to incur penalties of any kind whatever on account of religious opinion. [*Art. 49, §§ 1, 2.*]

No person is bound to pay taxes of which the proceeds are specifically appropriated to the actual expenses of the worship of a religious body to which he does not belong. The details of the carrying out of this principle are reserved for federal legislation. [*Art. 49, § 6.*]

**United States.** — [Congress shall make no law] respecting an establishment of religion, or prohibiting the free exercise thereof; or . . . [*Amendment I.*]

**§ 337. Power over citizens: — Religion; — No religious test.**

**Switzerland.** — The exercise of civil or political rights shall not be abridged by any provisions or conditions whatever of an ecclesiastical or religious kind. [*Art. 49, § 4.*]

**United States.** — . . . but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States. [*Art. IV, § 3.*]

**§ 338. Power over citizens: — Religion; — Free exercise.**

**Switzerland.** — The free exercise of religious worship is guaranteed within the limits compatible with public order and good morals. [*Art. 50, § 1.*]

**§ 339. Power over Citizens: — Religion; — Relation of ecclesiastical bodies to the state.**

**Switzerland.** — The Cantons and the Confederation may take suitable measures for the preservation of public order and of peace between the members of different religious bodies, and also against encroachments of ecclesiastical authorities upon the rights of citizens and of the State.

Contests in public and private law, which arise out of the formation or the division of religious bodies, may be brought by appeal before the competent federal authorities.

No bishopric shall be created upon Swiss territory without the consent of the Confederation. [*Art. 50, §§ 2-4.*]

**§ 340. Power over citizens: — Religion; — Religious orders prohibited.**

**Switzerland.** — The order of the Jesuits, and the societies affiliated with them, shall not be received into any part of Switzerland; and all action in church and school is forbidden to its members.

This prohibition may be extended also, by federal ordinance, to other religious orders, the action of which is dangerous to the state or disturbs the peace between sects. [*Art. 51.*]

The foundation of new convents or religious orders, and the reestablishment of those which have been suppressed, are forbidden. [*Art. 52.*]

**§ 341. Power over citizens: — Religion; — No release from civil duty.**

**Switzerland.** — No person shall, on account of a religious belief, release himself from the accomplishment of a civil duty. [*Art. 49, § 5.*]

## EDUCATION.

**Canada.** — EDUCATION. [*Title VI, Sub-title 3.*]

**§ 342. Power over citizens: — Education; — By the states.**

**Canada.** — In and for each Province the Legislature may exclusively make Laws in relation to Education, subject and according to the following Provisions: — [*Art. 93.*]

**Switzerland.**—The Cantons provide for primary instruction, which shall be sufficient, and shall be placed exclusively under the direction of the secular authority. It is compulsory and, in the public schools, free. [*Art. 27, § 2.*]

A delay of five years is allowed to Cantons for the establishment of free instruction in primary public education. (*Art. 27.*) [*Temporary provisions, Art. 4.*]

**§ 343. Power over citizens:—Education;—Enforcement by the Union.**

**Canada.**—In case any such Provincial Law as from Time to Time seems to the Governor General in Council requisite for the due Execution of the Provisions of this Section is not made, or in case any Decision of the Governor General in Council on any Appeal under this Section is not duly executed by the proper Provincial Authority in that Behalf, then and in every such Case, and as far only as the Circumstances of each Case require, the Parliament of Canada may make remedial Laws for the due Execution of the Provisions of this Section and of any Decision of the Governor General in Council under this Section. [*Art. 93, § 4.*]

**Switzerland.**—The Confederation shall take the necessary measures against such Cantons as shall not fulfill these duties. [*Art. 27, § 4.*]

**§ 344. Power over citizens:—Education;—Higher.**

**Switzerland.**—The Confederation has the right to establish, besides the existing Polytechnic School, a Federal University and other institutions of higher instruction, or to subsidize institutions of such nature. [*Art. 27, § 1.*]

**§ 345. Power over citizens:—Education;—Sectarian schools.**

**Canada.**—Nothing in any such Law [for each Province] shall prejudicially affect any Right or Privilege with respect to Denominational Schools which any Class of Persons have by Law in the Province at the Union:

All the Powers, Privileges, and Duties at the Union by Law conferred and imposed in Upper Canada on the Separate Schools and School Trustees of the Queen's Roman Catholic Subjects shall be and the same are hereby extended to the Dissident Schools of the Queen's Protestant and Roman Catholic Subjects in Quebec:

Where in any Province a System of Separate or Dissident Schools exists by Law at the Union or is thereafter established by the Legislature of the Province, an Appeal shall lie to the Governor General in Council from any Act or Decision of any Provincial Authority affecting any Right or Privilege of the Protestant or Roman Catholic Minority of the Queen's Subjects in relation to Education: [*Art. 93, §§ 1-3.*]

**Switzerland.**—The public schools shall be such that they may be frequented by the adherents of all religious sects, without any offense to their freedom of conscience or of belief. [*Art. 27, § 3.*]

The person who exercises the parent's or guardian's authority has the right, conformably to the principles above stated, to regulate the religious education of children up to the age of sixteen completed years. [*Art. 49, § 3.*]

## FINANCIAL POWERS.

**Canada.**—VIII. REVENUES; DEBTS; ASSETS; TAXATION. [*Title VIII.*]

**Germany.**—XII.—FINANCES OF THE EMPIRE. [*Title XII.*]

FINANCIAL PROVISION OF SECTION XII.

**§ 346. Financial powers:—Administration;—The budget.**

**Germany.**—All receipts and expenditures of the Empire shall be estimated yearly, and included in the budget. The latter shall be fixed by law before the beginning of the fiscal year, according to the following principles: [*Art. 69.*]

For the purpose of discharge an annual report of the expenditure of all the receipts of the Empire shall be rendered, through the Imperial Chancellor, to the Federal Council and the Diet. [*Art. 72.*]

Articles 69 and 71 apply to expenditures for the Bavarian army, subject to the provisions of the treaty of November 23, 1870 (mentioned in the final provision of Section XI.) and Article 72 only so far as it is required to inform the Federal Council and the Diet that the sum necessary for the Bavarian army has been assigned to Bavaria. [*Final provision of Title XII.*]

**Switzerland.** — [Within the competence of the two Councils are] The determination of the annual budget, the audit of public accounts, and . . . [*Art. 35, § 10.*]

It [the Federal Council] administers the finances of the Confederation, introduces the budget, and submits accounts of receipts and expenses. [*Art. 102, § 14.*]

**United States.** — . . . a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time. [*Art. I, Sec. 9, § 7.*]

**§ 347. Financial powers: — Administration; — Collection of taxes by States.**

**Germany.** — The administration and collection of customs duties and of the excise on articles of consumption (Article 35) is left to each State of the Confederation within its own territory, so far as this has been done by each State heretofore.

To ensure observance of imperial law by the State administration, the Emperor shall (after consulting the committee of the Federal Council on customs and revenues) appoint certain imperial officers in the custom or excise offices of the several States.

Reports made by these officials as to defects in the execution of the laws of the Empire (Article 35) shall be submitted to the Federal Council for action. [*Art. 36.*]

**Switzerland.** — *State collection of liquor duties; § 364.*

**§ 348. Financial powers: — Administration; — Settlement of accounts with States.**

**Germany.** — The quarterly summaries to be regularly made by the revenue officers of the Federal States at the end of every quarter, and the final statement (to be made at the end of the year, and after the closing of the account-books) of the receipts which have become due in the course of the quarter, or during the fiscal year, from customs and from the other revenues which (according to Article 38) belong to the Treasury of the Empire, shall be arranged by the administrative officers of the various States, after a preliminary audit, in general summaries, in which the result of every impost is to be shown separately; these summaries shall be transmitted to the Committee of Audit of Federal Council.

The latter (taking as a basis these summaries), fixes provisionally every three months the amount due to the Treasury of the Empire from the Treasury of each State, and it shall inform the Federal Council and the Federal States of the amount so fixed; furthermore, it shall submit to the Federal Council annually the final statement of these amounts with its remarks. The Federal Council shall take action upon the work of the committee. [*Art. 39.*]

**§ 349. Financial powers: — Administration; — Deduction for expenses.**

**Germany.** — The amounts accruing from customs and from the other revenues designated in Article 35, so far as the latter are subject to imperial legislation, shall go to the treasury of the Empire.

This amount is made up of the total receipts from the customs and other revenues, after deducting therefrom —

1. Tax rebates and reductions in conformity with existing laws or general administrative regulations.

2. Reimbursements for taxes unlawfully collected.
3. The costs of collection and administration, viz:
  - a. In the department of customs, the costs which are required for the protection and collection of customs on the frontiers and in the frontier districts.
  - b. In the department of the duty on salt, the costs which are used for the pay of the officers charged with collecting and controlling this duty in the salt works.
  - c. In the department of taxes on beet sugar and tobacco, the compensation which is to be allowed, according to the rules of the Federal Council, to the several State Governments for the cost of managing these duties and taxes.
  - d. Fifteen per cent. of the total receipts from other taxes. [Art. 38.]

**§ 350. Financial powers:—Revenue;—Consolidated fund.**

**Canada.**—All Duties and Revenues over which the respective Legislatures of Canada, Nova Scotia, and New Brunswick before and at the Union had and have Power of Appropriation, except such Portions thereof as are by this Act reserved to the respective Legislatures of the Provinces, or are raised by them in accordance with the special Powers conferred on them by this Act, shall form One Consolidated Revenue Fund, to be appropriated for the Public Service of Canada in the Manner and subject to the Charges in this Act provided. [Art. 102.]

**Germany.**—The surplus of the previous year, the common revenues derived from customs duties, from the common excise duties, and from the postal and telegraph service, shall be applied to the defrayal of all general expenditures. [Art. 70.]

**Switzerland.**—The expenditures of the Confederation are met as follows:

- (a) Out of the income from federal property.
- (b) Out of the proceeds of the federal customs levied at the Swiss frontier.
- (c) Out of the proceeds of the posts and telegraphs.
- (d) Out of the proceeds of the powder monopoly.
- (e) Out of half of the gross receipts from the tax on military exemptions levied by the Cantons.
- (f) Out of the contributions of the Cantons, . . . [Art. 42.]

**§ 351. Financial powers:—Revenue;—State consolidated fund.**

**Canada.**—Such Portions of the Duties and Revenues over which the respective Legislatures of Canada, Nova Scotia, and New Brunswick had before the Union Power of Appropriation as are by this Act reserved to the respective Governments or Legislatures of the Provinces, and all Duties and Revenues raised by them in accordance with the special Powers conferred upon them by this Act, shall in each Province form One Consolidated Revenue Fund to be appropriated for the Public Service of the Province. [Art. 126.]

**§ 352. Financial powers:—Revenue;—General power of taxation.**

**Canada.**—[The exclusive Legislative Authority of Parliament extends to] The raising of Money by any Mode or System of Taxation. [Art. 91, § 3.]

**Germany.**—[Under the supervision and legislative control of the Empire shall be] Legislation concerning customs-duties, . . . and such taxes as are to be applied to the uses of the Empire. [Art. 4, § 2.]

**United States.**—[The Congress shall have Power] To lay and collect Taxes, Duties, Imposts and Excises, . . . [Art. I, Sec. 8, § 1.]

**§ 353. Financial powers:—Revenue;—Purposes of taxation.**

**United States.**— . . . to pay the Debts and provide for the common Defence and general Welfare of the United States; . . . [Art. I, Sec. 8, § 1.]

**§ 354. Financial powers: — Revenue; — Limitations on taxation.**

**Canada.** — No Lands or Property belonging to Canada or any Province shall be liable to Taxation. [*Art. 125.*]

**United States.** — . . . but all Duties, Imposts and Excises shall be uniform throughout the United States; . . . [*Art. I, Sec. 8, § 1.*]

No Capitation, or other direct, tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken. [*Art. I, Sec. 9, § 4.*]

No Tax or Duty shall be laid on Articles exported from any State. [*Art. I, Sec. 9, § 5.*]

**§ 355. Financial powers: — Revenue; — State taxation.**

*Limitations on State taxation: §§ 100, 357.*

**Canada.** — [In each Province the Legislature may exclusively make Laws in relation to] Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes. [*Art. 92, § 2.*]

Shop, Saloon, Tavern, Auctioneer, and other Licenses in order to the raising of a Revenue for Provincial, Local, or Municipal Purposes. [*Art. 92, § 9.*]

**Germany.** — *Taxes for internal improvements: § 384.*

**Switzerland.** — *State excise duties: §§ 364, 365.*

**§ 356. Financial powers: — Revenue; — Consideration for States.**

**Switzerland.** — Federal legislation shall provide, besides, that the loss which may be occasioned to the finances of certain Cantons by the sum of the charges which result from Articles 20, 30, 36 (§ 2), and 42 (e), shall fall upon such Cantons only gradually, and shall not attain its full effect till after a transition period of some years. [*Temporary provisions, Art. 1, § 2.*]

**§ 357. Financial powers: — Revenue; — Special limitations on State taxation.**

*Limitations on customs and excise: §§ 360, 361.*

**Switzerland.** — The exit duty on property [*traite foraine*] is abolished in the interior of Switzerland, as well as the right of redemption [*droit de retrait*] by citizens of one Canton against those of other confederated States. [*Art. 62.*]

**United States.** — No State shall, without the Consent of Congress, lay any Duty of Tonnage, . . . [*Art. I, Sec. 10, § 3.*]

**§ 358. Financial powers: — Revenue; — Requisitions.**

**Germany.** — In so far as these [general] expenditures are not covered by the receipts, they shall be provided for, as long as no taxes of the Empire shall have been established, by assessing the several States of the Empire according to their population, the amount of the assessment to be fixed by the Chancellor of the Empire in accordance with the budget agreed upon. [*Art. 70.*]

The territories situated outside of the common customs-frontier shall contribute to the expenses of the Empire by paying an aversum (lump sum, or sum of acquittance). [*Art. 38, § 10.*]

**Switzerland.** — . . . which [contributions of the Cantons] shall be determined by federal legislation, with special reference to their wealth and taxable resources. [*Art. 42, (f).*]

**§ 359. Financial powers: — Revenue; — Customs duties.**

**Germany.** — *Free ports outside the customs frontier: § 283.*

The Empire shall have the exclusive power to legislate concerning everything relating to the customs; . . . as well as concerning the measures which are required in the territory, outside the customs lines, for the security of the common customs frontier. [*Art. 35, § 1.*]

**Switzerland.**—The customs are in the province of the Confederation. It may levy export and import duties. [*Art. 28.*]

The proceeds of the customs belong to the Confederation. [*Art. 30, § 1.*]

**§ 360. Financial powers:—Customs;—Limitations on the States.**

**Canada.**—The Customs and Excise Laws of each Province shall, subject to the Provisions of this Act, continue in force until altered by the Parliament of Canada. [*Art. 122.*]

Nothing in this Act shall effect the Right of New Brunswick to levy the Lumber Dues provided in Chapter Fifteen of Title Three of the Revised Statutes of New Brunswick, or in any Act amending that Act before or after the Union, and not increasing the Amount of such Dues, but the Lumber of any of the Provinces other than New Brunswick shall not be subject to such Dues. [*Art. 124.*]

**Germany.**—The terms of the Customs-Union Treaty of July 8, 1867, remain in force, so far as they have not been altered by the provisions of this Constitution, and as long as they are not altered in the manner designated in Articles 7 or 78. [*Art. 40, § 1.*]

**Switzerland.**—The indemnity ceases which hitherto has been paid to the Cantons for the redemption of customs, for road and bridge tolls, customs duties and other like dues. [*Art. 30, § 2.*]

**United States.**—No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the revision and Controul of the Congress. [*Art. I, Sec. 10, § 2.*]

**§ 361. Financial powers:—Revenue;—No interstate customs.**

*General limitation on legislation as to interstate commerce: § 383.*

**Canada.**—All Articles of the Growth, Produce, or Manufacture of any one of the Provinces shall, from and after the Union, be admitted free into each of the other Provinces. [*Art. 121.*]

Where Customs Duties are, at the Union, leviable on any Goods, Wares, or Merchandises in any Two Provinces, those Goods, Wares, and Merchandises may, from and after the Union, be imported from one of those Provinces into the other of them on Proof of Payment of the Customs Duty leviable thereon in the Province of Exportation, and on Payment of such further Amount (if any) of Customs Duty as is leviable thereon in the Province of Importation. [*Art. 123.*]

**Germany.**—It shall be lawful to introduce all articles of commerce of any State of the Confederation into any other State of the Confederation without paying any impost thereon, except as far as similar articles are subject to internal taxation therein. [*Art. 33.*]

**§ 362. Financial powers:—Revenue;—Principles of levying customs.**

**Switzerland.**—The collection of the federal customs shall be regulated according to the following principles:

1. Duties on imports:

(a) Materials necessary for the manufactures and agriculture of the country shall be taxed as low as possible.

(b) It shall be the same with the necessities of life.

(c) Luxuries shall be subjected to the highest duties. [*Art. 29, § 1.*]

**§ 363. Financial powers:—Revenue;—Excise.**

**Germany.**—[The Empire shall have the exclusive power to legislate concerning everything relating] to the taxation of salt and tobacco manufactured or raised in the

territory of the Confederation; to the taxation of domestic brandy and beer, and of sugar and syrup prepared from beets or other domestic products. It shall have exclusive power to legislate concerning the mutual protection (against fraud) of all taxes upon articles of consumption levied in the several States of the Empire, . . . [Art. 35, § 1.]

In taking action upon the rules and regulations for the execution of the laws of the Empire (Article 35), the vote of the presidium shall decide whenever it shall pronounce for upholding the existing rule or regulation. [Art. 37.]

*Rebate on excise taxes:* § 365.

**Switzerland.**—The Confederation is authorized by legislation to make regulations for the manufacture and sale of alcohol. In this legislation those products which are intended for exportation, or which have been subjected to a process excluding them from use as a beverage, shall be subjected to no tax. Distillation of wine, fruit, and their by-products, of gentian root, juniper berries, and similar products, is not subject to federal legislation as to manufacture or tax.

After the cessation of the import duties on spirituous liquors, provided for in Article 32 of the Constitution, the trade in liquors not distilled shall not be subjected by the Cantons to any special taxes or to other limitations than those necessary for protection against adulterated or noxious beverages. Nevertheless, the powers of the Cantons, defined in Article 31, are retained over the keeping of drinking places, and the sale at retail of quantities less than two liters. [Art. 32 (ii), §§ 1, 2. Amendment of Dec. 22, 1885.]

#### § 364. Financial powers:—Revenue;—State collection of liquor duties.

**Switzerland.**—The Cantons are authorized to collect the import duties on wines and other spirituous liquors, provided in Article 31 (a), always under the following restrictions:

(a) The collection of these import duties shall in no wise impede transportation: commerce shall be obstructed as little as possible and shall not be burdened with any other dues.

(b) If the articles imported for consumption are re-exported from the Canton, the duties paid on importation shall be refunded, without further charges.

(c) Products of Swiss origin shall be less burdened than those of foreign countries.

(d) The existing import duties on wines and other spirituous liquors of Swiss origin shall not be increased by the Cantons which already levy them. Such duties shall not be established upon such articles by Cantons which do not at present collect them.

(e) The laws and ordinances of the Cantons on the collection of import duties shall, before their going into effect, be submitted to the federal government for approval, in order that it may, if necessary, cause the enforcement of the preceding provisions.

All the import duties now levied by the Cantons, as well as the similar duties levied by the Communes, shall cease, without indemnity, at the end of the year 1890. [Art. 32.]

#### § 365. Financial powers:—Excise;—Proceeds given to the States.

**Germany.**—In Bavaria, Wurtemberg, and Baden, the matter of imposing duties on domestic brandy and beer is reserved for the legislation of each State. The States of the Confederation shall, however, endeavor to bring about uniform legislation regarding the taxation of those articles also. [Art. 35, § 2.]

Bavaria, Wurtemberg, and Baden shall not share in the revenues from duties on brandy and beer, which go into the Treasury of the Empire, nor in the corresponding portion of the aforesaid aversum. [Art. 35, § 11.]

**Switzerland.**—The net proceeds resulting from taxation on the sale of alcohol belong to the Cantons in which the tax is levied.



The net proceeds to the Confederation from the internal manufacture of alcohol, and the corresponding addition to the duty on imported alcohol, are divided among all the Cantons, in proportion to the actual population as ascertained from time to time by the next preceding federal census. Out of the receipts therefrom the Cantons must expend not less than one tenth in combating drunkenness in its causes and effects. [*Art. 32 (ii), §§ 3, 4.*]

If a federal law for carrying out Article 32 (ii) be passed before the end of 1890, the import duties levied on spirituous liquors by the Cantons and Communes, according to Article 32, cease on the going into effect of such law.

If, in such case, the shares of any Canton or Commune, out of the sums to be divided, are not sufficient to equal the average annual net proceeds of the taxes they have levied on spirituous liquors in the years 1880 to 1884 inclusive, the Cantons and Communes affected shall, till the end of 1890, receive the amount of the deficiency out of the amount which is to be divided among the other Cantons according to population; and the remainder only shall be divided among such other Cantons and Communes, according to population.

The Confederation shall further provide by law that for such Cantons or Communes as may suffer financial loss through the effect of this amendment, such loss shall not come upon them immediately in its full extent, but gradually up to the year 1895. The indemnities thereby made necessary shall be previously taken out of the net proceeds designated in Article 32 (ii), paragraph 4. [*Temporary provisions, Art. 6 (Amendment of Dec. 22, 1885).*]

**§ 366. Financial powers:—Care of public property.**

*Regulations as to public property: §§ 284, 286.*

**§ 367. Financial powers:—Borrowing money;—General power.**

**Canada.**—[The exclusive Legislative Authority of the Parliament extends to] The Public Debt and Property. [*Art. 91, § 1.*]

The borrowing of Money on the Public Credit. [*Art. 91, § 4.*]

[In each Province the Legislature may exclusively make Laws in relation to] The borrowing of Money on the sole Credit of the Province. [*Art. 92, § 3.*]

**Germany.**—[Under the supervision and legislative control of the Empire shall be regulation] of the emission of “funded and unfunded” paper money. [*Art. 4, § 3.*]

In cases of extraordinary requirements, a loan may be contracted by imperial law, or a guarantee assumed in the name of the Empire. [*Art. 73.*]

**Switzerland.**—[Within the competence of the two Councils are] federal ordinances authorizing loans. [*Art. 85, § 10.*]

**United States.**—[The Congress shall have Power] To borrow Money on the credit of the United States; . . . [*Art. I, Sec. 8, § 2.*]

**§ 368. Financial powers:—Borrowing money;—Assumption of State debt.**

**Canada.**—Canada shall be liable for the Debts and Liabilities of each Province existing at the Union. [*Art. 111.*]

Ontario and Quebec conjointly shall be liable to Canada for the Amount (if any) by which the Debt of the Province of Canada exceeds at the Union Sixty-two million five hundred thousand Dollars, and shall be charged with Interest at the Rate of Five per Centum per Annum thereon. [*Art. 112.*]

Nova Scotia shall be liable to Canada for the Amount (if any) by which its Public Debt exceeds at the Union Eight million Dollars, and shall be charged with Interest at the Rate of Five per Centum per Annum thereon. [*Art. 114.*]

New Brunswick shall be liable to Canada for the Amount (if any) by which its Public Debt exceeds at the Union Seven million Dollars, and shall be charged with Interest at the Rate of Five per Centum per Annum thereon. [*Art. 115.*]

In case the Public Debts of Nova Scotia and New Brunswick do not at the Union amount to Eight million and Seven million Dollars respectively, they shall respectively receive by half-yearly Payments in advance from the Government of Canada Interest at Five per Centum per Annum on the Difference between the actual Amounts of their respective Debts and such stipulated Amounts. [*Art. 116.*]

All Assets connected with such Portions of the Public Debt of each Province as are assumed by that Province shall belong to that Province. [*Art. 110.*]

All Stocks, Cash, Banker's Balances, and Securities for Money belonging to each Province at the Time of the Union, except as in this Act mentioned, shall be the Property of Canada, and shall be taken in Reduction of the amount of the respective Debts of the Provinces at the Union. [*Art. 107.*]

**§ 369. Financial power:—Borrowing money;—Debts guaranteed.**

**United States.**—All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation. [*Art. VI, § 1.*]

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. [*Amendment XII, Sec. 4.*]

**§ 370. Financial powers:—Borrowing money;—Claims excluded.**

**United States.**—But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void. [*Amendment XIV, Sec. 4.*]

**§ 371. Financial powers:—Expenditure;—Appropriations.**

*Special provisions as to military and naval expenses: § 442.*

**Germany.**—The general expenditures shall be, as a rule, granted for one year; they may, however, in special cases, be granted for a longer period. During the period of transition fixed in Article 60, the financial estimate, properly classified, of the expenditures of the army shall be laid before the Federal Council and the Diet merely for their information. [*Art. 71.*]

**United States.**—No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; . . . [*Art. I, Sec. 9, § 7.*]

**§ 372. Financial powers:—Expenditures;—Grants to States.**

**Canada.**—The following Sums shall be paid yearly by Canada to the several Provinces for the Support of their Governments and Legislatures:

	Dollars.
Ontario .....	Eighty thousand.
Quebec .....	Seventy thousand.
Nova Scotia.....	Sixty thousand.
New Brunswick.....	Fifty thousand.

Two hundred and sixty thousand;

and an annual Grant in aid of each Province shall be made, equal to Eighty Cents per Head of the Population as ascertained by the Census of One thousand eight hundred and sixty-one, and in the Case of Nova Scotia and New Brunswick, by each subsequent Decennial Census until the Population of each of those two Provinces amounts to Four hundred thousand Souls, at which Rate such Grant shall thereafter remain. Such

Grants shall be in full Settlement of all future Demands on Canada, and shall be paid half-yearly in advance to each Province; but the Government of Canada shall deduct from such Grants, as against any Province, all Sums chargeable as Interest on the Public Debt of that Province in excess of the several Amounts stipulated in this Act. [*Art. 118.*]

New Brunswick shall receive by half-yearly Payments in advance from Canada for the Period of Ten Years from the Union an additional Allowance of Sixty-three thousand Dollars per Annum; but as long as the Public Debt of that Province remains under Seven million Dollars, a Deduction equal to the Interest at Five per Centum per Annum on such Deficiency shall be made from that Allowance of Sixty-three thousand Dollars. [*Art. 119.*]

All Payments to be made under this Act, or in discharge of Liabilities created under any Act of the Provinces of Canada, Nova Scotia, and New Brunswick respectively, and assumed by Canada, shall, until the Parliament of Canada otherwise directs, be made in such Form and Manner as may from Time to Time be ordered by the Governor General in Council. [*Art. 120.*]

**Switzerland.** — By exception, and on account of their international alpine roads, the Cantons of Uri, Grisons, Ticino, and Valais receive an annual indemnity, which, considering all the circumstances, is fixed as follows:

Uri, 80,000 francs.  
Grisons, 200,000 francs.  
Ticino, 200,000 francs.  
Valais, 50,000 francs.

The Cantons of Uri and Ticino shall receive in addition, for clearing the snow from the Saint Gotthard road, an annual indemnity of 40,000 francs, so long as that road shall not be replaced by a railroad. [*Art. 30, §§ 3, 4.*]

*Reimbursement for expenses of military equipment: § 431.*

**§ 373. Financial powers: — Expenditures; — Succession of charges.**

**Canada.** — The Consolidated Revenue Fund of Canada shall be permanently charged with the Costs, Charges, and Expenses incident to the Collection, Management, and Receipt thereof, and the same shall form the First Charge thereon, subject to be reviewed and audited in such Manner as shall be ordered by the Governor General in Council until the Parliament otherwise provides. [*Art. 103.*]

The annual Interest of the Public Debts of the several Provinces of Canada, Nova Scotia, and New Brunswick at the Union shall form the Second Charge on the Consolidated Revenue Fund of Canada. [*Art. 104.*]

Unless altered by the Parliament of Canada, the Salary of the Governor General shall be Ten thousand Pounds Sterling Money of the United Kingdom of Great Britain and Ireland, payable out of the Consolidated Revenue Fund of Canada, and the same shall form the Third Charge thereon. [*Art. 105.*]

Subject to the several Payments by this Act charged on the Consolidated Revenue Fund of Canada, the same shall be appropriated by the Parliament of Canada for the Public Service. [*Art. 106.*]

**§ 374. Financial powers: — Expenditures; — Salaries.**

**Canada.** — [The exclusive Legislative Authority of Parliament extends to] The fixing of and providing for the Salaries and Allowances of Civil and other Officers of the Government of Canada. [*Art. 91, § 8.*]

**United States.** — *Salaries of judges not to be diminished during their term: § 253.*

*Salary of the President not to be increased or diminished during his term: § 219.*

## COMMERCIAL POWERS.

Germany. — VI. — CUSTOMS AND COMMERCE. [*Title VI.*]

## MOVEMENT OF COMMERCE.

## § 375. Commercial powers: — In general.

Canada. — [The exclusive Legislative Authority of the Parliament extends to] The Regulation of Trade and Commerce. [*Art. 91, § 2.*]

Germany. — [Under the supervision and legislative control of the Empire shall be] commerce, . . . [*Art. 4, § 2.*]

## § 376. Commercial powers: — Foreign Commerce.

Canada. — [The exclusive Legislative Authority of the Parliament extends to] Quarantine and the Establishment and Maintenance of Marine Hospitals. [*Art. 91, § 11.*]

Germany. — [Under the supervision and legislative control of the Empire shall be] The organization of a general system of protection for German trade in foreign countries; [*Art. 4, § 7.*]

The levying of other or higher duties upon foreign vessels or their freights than those which are paid by the vessels of the Federal States or their freights, does not belong to the various States, but to the Empire. [*Art. 54, § 5.*]

Switzerland. — Unless there are imperative reasons to the contrary, these principles shall be observed also in the conclusion of treaties of commerce with foreign powers.

2. The duties on exports shall also be as low as possible.

3. The customs legislation shall include suitable provisions for the continuance of commercial and market intercourse across the frontier.

The above provisions do not prevent the Confederation from making temporary exceptional provisions, under extraordinary circumstances. [*Art. 29.*]

United States. — [The Congress shall have Power] To regulate Commerce with foreign Nations, and . . . [*Art. I, Sec. 8, § 3.*]

## § 377. Commercial powers: — Shipping and navigation.

Canada. — [The exclusive Legislative Authority of the Parliament extends to] Beacons, Buoys, Lighthouses, and Sable Island. [*Art. 91, § 9.*]

Navigation and Shipping. [*Art. 91, § 10.*]

Germany. — IX. — MARINE AND NAVIGATION. [*Title IX.*]

[Under the supervision and legislative control of the Empire shall be the organization] of German navigation, and of the German flag on the high seas; . . . [*Art. 4, § 7.*]

The merchant vessels of all States of the Union shall form the commercial marine of the Empire.

The Empire shall determine the process for ascertaining the tonnage of sea-going vessels, shall regulate the issuing of tonnage-certificates and of ship-certificates in general, and shall fix the conditions on which a permit for commanding a sea-going vessel shall be issued. [*Art. 54, §§ 1-2.*]

The flag of the war and merchant navy shall be black, white and red. [*Art. 55.*]

## § 378. Commercial powers: — Special regulation as to ports.

Germany. — *Free ports of Hamburg, Lübeck, and Bremen*: § 283.

The merchant vessels of all the States of the Union shall be admitted on equal footing to the harbors, and to all natural and artificial water-courses of the several States of the Union, and all shall be entitled to similar treatment. [*Art. 54, § 3.*]

United States. — No Preference shall be given by any Regulation of Commerce or

Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another. [*Art. 1, Sec. 9, § 6.*]

**§ 379. Commercial powers:—Fisheries.**

**Canada.**—[The exclusive Legislative Authority of the Parliament extends to] Sea Coast and Inland Fisheries. [*Art. 91, § 12.*]

**§ 380. Commercial powers:—Immigration.**

*General powers over aliens: § 295.*

**Canada.**—*Provincial control of immigration: § 410.*

**United States.**—The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person. [*Art. 1, Sec. 9, § 1.*]

*No amendment to affect this clause: § 458.*

**§ 381. Commercial powers:—Emigration.**

*Loss of citizenship: § 293. Relation to military service: § 436.*

**Germany.**—*Legislation on colonization and emigration: § 292.*

**Switzerland.**—The transactions of emigration agents and . . . are subject to federal supervision and legislation. [*Art. 34, § 2.*]

**§ 382. Commercial powers:—Consular System.**

*Regulation of foreign affairs: § 411. General consular system: §§ 413-414.*

**§ 383. Commercial powers:—Interstate Commerce.**

**Canada.**—[The exclusive Legislative Authority of Parliament extends to] Ferries between a Province and any British or Foreign Country or between Two Provinces. [*Art 91, § 13.*]

**Germany.**—[Under the supervision and legislative control of the Empire shall be] trade and industry, including [insurance] so far as these matters are not already provided for by Article 3 of this Constitution (in Bavaria, however, exclusive of matters relating to domicile and settlement), . . . [*Art. 4, § 1.*]

Rafting and navigation upon those water ways which are common to several States, and the condition of such waters; also the river and other water dues. [*Art. 4, § 9.*]

**Switzerland.**—The freedom of trade and of industry is guaranteed throughout the whole extent of the Confederation.

The following subjects are excepted:

(a) The salt and gunpowder monopoly, the federal customs, import duties on wines and other spirituous liquors, and other taxes on consumption expressly permitted by the Confederation, according to Article 32.

(b) The manufacture and sale of alcohol, under Article 32 (ii). (Amendment of Dec. 22, 1885.)

(c) Drinking places, and the retail trade in spirituous liquors; but nevertheless the Cantons may by legislation subject the business of keeping drinking places, and the retail trade in spirituous liquors, to such restrictions as are required for the public welfare. (Amendment of Dec. 22, 1885.)

(d) Measures of sanitary police against epidemics and cattle diseases.

(e) Provisions in regard to the exercise of trades and manufactures, in regard to taxes imposed thereon, and in regard to the police of the roads.

These provisions shall not contain anything contrary to the principle of freedom of trade and manufacture. [*Art. 31.*]

**United States.**—[The Congress shall have Power to regulate Commerce] among the several States, . . . [*Art. 1, Sec. 8, § 3.*]

## MEANS OF COMMERCE.

## § 384. Commercial powers: — Internal improvements.

**Canada.** — [In each Province the Legislature may exclusively make Laws in relation to] Local Works and Undertakings other than such as are of the following Classes, —

*a.* Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province:

*b.* Lines of Steam Ships between the Province and any British or Foreign Country:

*c.* Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces. [Art. 92, § 10.]

*Public works which are the property of Canada:* § 286.

*Right to construct public works:* § 186.

**Germany.** — [Under the supervision and legislative control of the Empire shall be] the construction of land and water ways for the purposes of public defence, and of general commerce. [Art. 4, § 8.]

The duties which shall be collected in the harbors of sea-going vessels, or levied upon their freights as fees, for the use of marine institutions, shall not exceed the amount required for the ordinary construction and maintenance of these institutions.

On all natural water-courses, duties may only be levied for the use of special establishments, which serve for facilitating commercial intercourse. These duties, as well as the duties for navigating such artificial channels as are property of the State, shall not exceed the amount required for the ordinary construction and maintenance of the institutions and establishments. These rules apply to rafting, so far as it is carried on along navigable water-courses. [Art. 54, §§ 3, 4.]

**Switzerland.** — The Confederation may construct at its own expense, or may aid by subsidies, public works which concern Switzerland or a considerable part of the country.

For this purpose it may expropriate property, on payment of a reasonable indemnity. Further enactments upon this matter shall be made by federal legislation.

The Federal Assembly may forbid public works which endanger the military interests of the Confederation. [Art. 23.]

The Confederation has the right of superintendence over dike and forest police in the upper mountain regions.

It may coöperate in the straightening and embankment of torrents as well as in the afforesting of the districts in which they rise. It may prescribe the regulations necessary to assure the maintenance of these works, and the preservation of existing forests. [Art. 24.]

The Confederation exercises general oversight over those roads and bridges in the maintenance of which it is interested.

The sums due to the Cantons mentioned in Article 30, on account of their international alpine roads, shall be retained by the federal government if such roads are not kept by them in suitable condition. [Art. 37.]

*Payment to the Cantons:* § 372.

## POWER OVER RAILWAYS.

**Canada.** — X. INTERCOLONIAL RAILWAY. [Title X.]

**Germany.** — VII. — RAILWAYS. [Title VII.]

**§ 385. Commercial powers: — Railways; — Control.**

**Germany.** — [Under the supervision and Legislative control of the Empire shall be] Railway matters (subject in Bavaria to the provisions of Article 46), and . . . [*Art. 4, § 8.*]

**Switzerland.** — Legislation upon the construction and operation of railroads is in the province of the Confederation. [*Art. 26.*]

**§ 386. Commercial powers: — Railways; — Construction.**

**Canada.** — Inasmuch as the Provinces of Canada, Nova Scotia, and New Brunswick have joined in a Declaration that the Construction of the Intercolonial Railway is essential to the Consolidation of the Union of British North America, and to the Assent thereto of Nova Scotia and New Brunswick, and have consequently agreed that Provision should be made for its immediate Construction by the Government of Canada: Therefore, in order to give effect to that Agreement, it shall be the Duty of the Government and Parliament of Canada to provide for the Commencement within Six Months after the Union, of a Railway connecting the River St. Lawrence with City of Halifax in Nova Scotia, and for the Construction thereof without Intermission, and the Completion thereof with all practicable Speed. [*Art. 145.*]

**Germany.** — Railways, which are considered necessary for the defence of Germany, or in the interest of general commerce, may by imperial law be constructed at the cost of the Empire, even in opposition to the will of those members of the Union through whose territory the railroads run, without prejudice, however, to the sovereign rights of that country; or private persons may be charged with their construction, and receive rights of expropriation.

Every existing railway company is bound to permit new railroad lines to be connected with it, at the expense of the latter.

All laws granting existing railway companies the right of injunction against the building of parallel or competitive lines are hereby abolished throughout the Empire, without detriment to rights already acquired. Such rights of injunction cannot be granted in concessions to be given hereafter. [*Art. 41.*]

**§ 387. Commercial powers: — Railways; — Uniform System.**

**Germany.** — The Governments of the Federal States bind themselves in the interest of general commerce, to have the German railways managed as one system, and for this purpose to have all new lines constructed and equipped according to a uniform plan. [*Art. 42.*]

Accordingly, as soon as possible, uniform arrangements as to management shall be made, and especially shall uniform regulations be adopted for the police of the railroads. [*Art. 43.*]

**§ 388. Commercial powers: — Railways; — Facilities.**

**Germany.** — The Empire shall take care that the various railway administrations keep the roads always in such condition as is required for public security, and that they be equipped with such rolling stock as the wants of trade demand. [*Art. 43.*]

Railway companies are bound to run as many passenger trains of suitable velocity as may be required for through traffic, and for the establishment of harmony between timetables; also to make provision for such freight trains as may be necessary for the wants of trade, and to organize a system of through booking both in passenger and freight traffic, permitting the wagons to go from one road to the other for the usual remuneration. [*Art. 44.*]

**§ 389. Commercial powers: — Railways; — Rates.**

**Germany.** — The Empire shall have control over the tariff of charges. It shall endeavor to cause

1. Uniform regulations to be speedily introduced on all German railway lines.

2. The tariff to be reduced and made uniform as far as possible, and particularly to secure low long-distance rates for the transport of coal, coke, wood, minerals, stone, salt, crude iron, manure, and similar articles, as demanded by the interests of agriculture and industry. It shall endeavor in the first instance to introduce a one pfennig tariff as soon as practicable. [*Art. 45.*]

In case of public distress, especially in case of an extraordinary rise in the price of provisions, it shall be the duty of the railway companies to adopt temporarily a low special tariff suited to the circumstances, which shall be fixed by the Emperor, on motion of the competent committee of the Federal Council, for the forwarding of grain, flour, vegetables, and potatoes. This tariff shall, however, not be less than the lowest rate for raw produce existing on the said line. [*Art. 46, § 1.*]

**§ 390. Commercial powers: — Railways; — Military use.**

**Germany.** — The managers of all railways shall be required to obey, without hesitation, requisitions made by the authorities of the Empire for the use of their roads for the defense of Germany. In particular shall troops and all material of war, be forwarded at uniform reduced rates. [*Art. 47.*]

**§ 391. Commercial powers: — Railways; — States excepted.**

**Germany.** — The foregoing provisions, and those of Articles 42 to 45, shall not apply to Bavaria.

The Imperial Government, however, has the power, with regard to Bavaria also, to prescribe by means of legislation uniform rules for the construction and equipment of such railways as may be of importance for the defence of the country. [*Art. 46, §§ 2, 3.*]

## POSTS AND TELEGRAPHS.

**Germany.** — VIII. — POST AND TELEGRAPH. [*Title VIII.*]

**§ 392. Commercial powers: — Post; — Establishment.**

**Canada.** — [The exclusive Legislative Authority of the Parliament extends to] Postal Service. [*Art. 91, § 5.*]

**Germany.** — [Under the supervision and legislative control of the Empire shall be] Postal and telegraphic affairs; . . . [*Art. 4, § 10.*]

The post and telegraph system shall be organized on a uniform plan, and managed as State institutions throughout the German Empire. [*Art. 48.*]

**Switzerland.** — The posts and telegraphs in all Switzerland are controlled by the Confederation. [*Art. 36, § 1.*]

**United States.** — [The Congress shall have Power] To establish Post Offices and post Roads; . . . [*Art. I, Sec. 8, § 7.*]

**§ 393. Commercial powers: — Post; — States excepted.**

**Germany.** — . . . but in Bavaria and Wurtemberg these [postal and telegraphic affairs] shall be subject to the provisions of Article 52. [*Art. 4, § 10.*]

Where there is no independent State administration of post or telegraph, the terms of the various treaties are to be enforced. [*Art. 50, § 6.*]

The stipulations of the foregoing Articles 48 to 51 do not apply to Bavaria and Wurtemberg. In their stead the following stipulations shall be valid for these two States of the Empire.

The Empire alone is authorized to legislate upon the privileges of the Post-office and Telegraph Departments, on the legal relations of both institutions toward the public, upon the franking privilege and rates of postage and telegraphic charges; excepting,



however, the adoption of administrative regulations and of postal and telegraph tariffs for domestic communication within Bavaria and Wurtemberg respectively.

In the same manner the Empire shall regulate postal and telegraphic communication with foreign countries, excepting the immediate intercourse of Bavaria and Wurtemberg with their adjacent foreign States, the regulation of which is subject to the stipulation in Article 49 of the postal treaty of November 23, 1867.

Bavaria and Wurtemberg shall not share in the postal and telegraphic receipts which belong to the Treasury of the Empire. [*Art. 52.*]

**§ 394. Commercial powers:—Post;—Administration.**

**Germany.**—The legislation of the Empire in regard to post and telegraph affairs, provided for in Article 4, shall not extend to those matters whose control is left to governmental ordinance or administrative regulation, according to the principles which have prevailed in the North German administration of post and telegraph. [*Art. 48.*]

The Emperor has the supreme supervision of the administration of post and telegraph. The authorities appointed by him are in duty bound and authorized to see that uniformity be established and maintained in the organization of the administration and in the transaction of business, as also in regard to the qualifications of employees.

The Emperor shall have the power to issue governmental ordinances and general administrative regulations, to issue general instructions, and also the exclusive right to regulate the relations which are to exist between the post and telegraph offices of Germany and those of other countries.

It shall be the duty of all officers of the Post-office and Telegraph Department to obey the orders of the Emperor. This obligation shall be included in their oath of office [*Art. 50, §§ 1-3.*]

**§ 395. Commercial powers:—Post;—Officials.**

**Germany.**—The appointment of such superior officers as shall be required for the administration of the post and telegraph in the various districts, such as directors, counselors, and superintendents; also the appointment of officers of the post and telegraph acting in the capacity of supervisors for the aforesaid authorities in the several districts, such as inspectors or controllers, shall be made throughout the Empire by the Emperor, to whom they shall take the oath of office. The Governments of the several States shall receive timely notice of the aforementioned appointments, as far as they may relate to their territories, so that they may confirm and publish them.

Other officials required in the administration of the post and telegraph, as also all officials employed for local and technical purposes, including therefore all subordinate officials in the office, shall be appointed by the respective Governments of the States. [*Art. 50, §§ 4, 5.*]

**§ 396. Commercial powers:—Post;—Disposition of proceeds.**

**Germany.**—The receipts from post and telegraph throughout the Empire, shall belong to a common fund. The expense shall be paid from the general receipts. The surplus goes into the imperial treasury. (Section 12.) [*Art. 49.*]

In consideration of the differences which have heretofore existed in the net receipts of the Post-office Departments of the several districts, and for the purpose of securing a suitable equalization during the period of transition below named, the following procedure is to be observed in assigning the surplus of the Post-office Department to the Treasury of the Empire for general purposes. (Article 49.)

From the postal surpluses which accumulated in the several postal districts during the five years from 1861 to 1865, a yearly average shall be computed, and the share which every separate postal district has had in the surplus resulting therefrom for the whole territory of the Empire shall be expressed in a percentage.

In accordance with the ratio thus ascertained, the several States shall be accredited on the account of their other contributions to the expenses of the Empire, with their quota accruing from the postal surplus in the Empire, for a period of eight years subsequent to their entrance into the Post-office Department of the Empire.

At the end of the said eight years the distinction shall cease, and any surplus in the Post-office Department shall go, without division, into the Treasury of the Empire, according to the principle enunciated in Article 49.

Of the quota of the Post-office Department surplus resulting during the afore-mentioned period of eight years in favor of the Hanseatic towns, one-half shall every year be placed at the disposal of the Emperor, for the purpose of providing for the establishment of the necessary post-offices in the Hanseatic towns. [*Art. 51.*]

**Switzerland.** — The proceeds of the posts and telegraphs belong to the federal treasury. [*Art. 36, § 2.*]

The proceeds of the posts and customs shall be divided upon the present basis, until such time as the Confederation shall take upon itself the military expenses up to this time borne by the Cantons. [*Temporary provisions, Art. 1, § 1.*]

**§ 397. Commercial powers: — Post; — Rates.**

**Switzerland.** — The rates shall, for all parts of Switzerland, be fixed according to the same principle and as fairly as possible. [*Art. 36, § 3.*]

**§ 398. Commercial powers: — Post; — Secrecy.**

**Switzerland.** — Inviolable secrecy of letters and telegrams is guaranteed. [*Art. 36, § 4.*]

**FACILITATION AND REGULATION OF BUSINESS.**

**§ 399. Commercial powers: — Coinage.**

**Canada.** — [The exclusive Legislative Authority of the Parliament extends to] Currency and Coinage. [*Art. 91, § 14.*]

**Germany.** — [Under the supervision and legislative control of the Empire shall be regulation] of the coinage; and . . . [*Art. 4, § 3.*]

**Switzerland.** — The Confederation exercises all the exclusive rights pertaining to coinage.

It has the sole right of coining money.

It establishes the monetary system, and may enact provisions, if necessary, for the rate of exchange of foreign coins. [*Art. 38.*]

**United States.** — [The Congress shall have Power] To coin Money, regulate the Value thereof, and of foreign Coin and . . . [*Art. I, Sec. 8, § 5.*]

[No State shall] coin Money; . . . [*Art. I, Sec. 10, § 1.*]

**§ 400. Commercial powers: — Weights and measures.**

**Canada.** — [The exclusive Legislative Authority of the Parliament extends to] Weights and Measures. [*Art. 91, § 17.*]

**Germany.** — [Under the supervision and legislative control of the Empire shall be] Regulation of weights and measures; . . . [*Art. 4, § 3.*]

**Switzerland.** — The Confederation fixes the standard of weights and measures.

The Cantons, under the supervision of the Confederation, enforce the laws relating thereto. [*Art. 40.*]

**United States.** — [The Congress shall have Power to] fix the Standard of Weights and Measures; . . . [*Art. I, Sec. 9, § 5.*]

**§ 401. Commercial powers: — Patents and copyright.**

**Canada.** — [The exclusive Legislative Authority of the Parliament extends to] Patents of Invention and Discovery. [*Art. 91, § 22.*]

Copyrights. [*Art. 91, § 23.*]

**Germany.**—[Under the supervision and legislative control of the Empire shall be] Patents for inventions.

The protection of intellectual property. [*Art. 4, §§ 5, 6.*]

**Switzerland.**—[The Confederation has power to make laws:]

On literary and artistic copyright. [*Art. 64, § 3.*]

On the protection of new patterns and forms, and of inventions which are represented in models and are capable of industrial application. [*Art. 64, Amendment of Dec. 20, 1887.*]

**United States.**—[The Congress shall have Power] To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries; . . . [*Art. I, Sec. 8, § 8.*]

**§ 402. Commercial powers:—Control of business.**

**Canada.**—[The exclusive Legislative Authority of Parliament extends to] Bills of Exchange and Promissory Notes.

Interest. [*Art. 91, §§ 18, 19.*]

[In each Province the Legislature may exclusively make Laws in relation to] Property and Civil Rights in the Province. [*Art. 92, § 13.*]

Notwithstanding anything in this Act, the Parliament of Canada may make Provision for the Uniformity of all or any of the Laws relative to Property and Civil Rights in Ontario, Nova Scotia, and New Brunswick, and of the Procedure of all or any of the Courts in those Three Provinces, and from and after the passing of any Act in that Behalf the Power of the Parliament of Canada to make Laws in relation to any Matter comprised in any such Act shall, notwithstanding anything in this Act, be unrestricted; but any Act of the Parliament of Canada making Provision for such Uniformity shall not have effect in any Province unless and until it is adopted and enacted as Law by the Legislature thereof. [*Art. 94.*]

**Switzerland.**—Persons settled in Switzerland are, as a rule, subjected to the jurisdiction and legislation of their domicile, in all that pertains to their personal status and property rights.

The Confederation shall by law make the provisions necessary for the application of this principle and for the prevention of double taxation of a citizen. [*Art. 46.*]

[The Confederation has power to make laws:]

On all legal questions relating to commerce and to transactions affecting chattels (law of commercial obligations, including commercial law and law of exchange). [*Art. 64, § 2.*]

**United States.**—[No State shall pass any] Law impairing the Obligation of Contracts, or . . . [*Art. I, Sec. 10, § 1.*]

**§ 403. Commercial powers:—Government monopolies.**

**Switzerland.**—The manufacture and the sale of gunpowder throughout Switzerland pertains exclusively to the Confederation.

Powders used for blasting and not suitable for shooting are not included in the monopoly. [*Art. 41.*]

**§ 404. Commercial powers:—Banks and paper money.**

**Canada.**—[The exclusive Legislative Authority of the Parliament extends to] Banking, Incorporation of Banks, and the Issue of Paper Money.

Savings Banks. [*Art. 91, §§ 15, 16.*]

**Germany.**—[Under the supervision and legislative control of the Empire shall be] General banking regulations. [*Art. 4, § 4.*]

**Switzerland.** The Confederation has the power to make by law general provisions for the issue and redemption of bank notes.

But it shall not create any monopoly for the issue of bank notes, nor . [Art. 39, § 1.]

**United States.** — [No State shall] emit Bills of Credit; . . . [Art. I, Sec. 10, § 1.]

**§ 405. Commercial powers: — Legal tender.**

**Canada.** — [The exclusive Legislative Authority of the Parliament extends to] Legal Tender. [Art. 91, § 20.]

**Switzerland.** — [But the Confederation shall not] make such notes a legal tender. [Art. 39, § 2.]

**United States.** — [No State shall] make any Thing but gold and silver Coin a Tender in Payment of Debts; . . . [Art. I, Sec. 10, § 1.]

**§ 406. Commercial powers: — Creation of corporations.**

**Canada.** — [In each Province the Legislature may exclusively make Laws in relation to] The Incorporation of Companies with Provincial Objects. [Art. 92, § 11.]

**§ 407. Commercial powers: — Insurance.**

**Germany.** — [Under the supervision and legislative control of the Empire shall be] insurance. [Art. 4, § 1.]

**Switzerland.** — [The transactions of] organizations for insurance, not instituted by the State, [are subject to federal supervision and legislation.] [Art. 34, § 2.]

**§ 408. Commercial powers: — The Census.**

*Use of the Census in apportionment, § 128.*

**Canada.** — [The exclusive Legislative Authority of the Parliament extends to] The Census and Statistics. [Art. 91, § 6.]

In the general Census of the Population of Canada which is hereby required to be taken in the Year One thousand eight hundred and seventy-one, and in every Tenth Year thereafter, the respective Populations of the Four Provinces shall be distinguished. [Art. 8.]

**United States.** — The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. [Art. I, Sec. 2, § 3.]

**§ 409. Commercial powers: — Collection of debts and bankruptcy.**

**Canada.** — [The exclusive Legislative Authority of the Parliament extends to] Bankruptcy and Insolvency. [Art. 91, § 21.]

**Switzerland.** — [The Confederation has power to make laws] On the legal collection of debts and on bankruptcy. [Art. 64, § 5.]

Suits for personal claims against a solvent debtor having a domicile in Switzerland, must be brought before the judge of his domicile; in consequence, his property outside the Canton in which he is domiciled may not be attached in suits for personal claims.

Nevertheless, with reference to foreigners, the provisions of international treaties shall not thereby be affected. [Art. 59, §§ 1, 2.]

**United States.** — [The Congress shall have Power to establish] uniform Laws on the subject of Bankruptcies throughout the United States. [Art. I, Sec. 8, § 4.]

**§ 410. Commercial powers: — Agriculture.**

**Canada.** — AGRICULTURE AND IMMIGRATION. [Title VI, Sub-title 5.]

In each Province the Legislature may make Laws in relation to Agriculture in the Province, and to Immigration into the Province; and it is hereby declared that the Parliament of Canada may from Time to Time make Laws in relation to Agriculture in all or any of the Provinces, and to Immigration into all or any of the Provinces; and any

Law of the Legislature of a Province relative to Agriculture or to Immigration shall have effect in and for the Province as long and as far only as it is not repugnant to any Act of the Parliament of Canada. [Art. 95.]

# FOREIGN POWERS.

## § 411. Foreign powers:—In general.

**Germany.**—The Emperor shall represent the Empire among nations, . . . [Art. 11, § 1.]

**Switzerland.**—[Within the competence of the two Councils are] Measures for external safety and also for the maintenance of the independence and neutrality of Switzerland; . . . [Art. 85, § 6.]

It [the Federal Council] watches over the external interests of the Confederation, particularly the maintenance of its international relations, and is, in general, intrusted with foreign relations. [Art. 102, § 8.]

It watches over the external safety of Switzerland, over the maintenance of independence and neutrality. [Art. 102, § 9.]

## § 412. Foreign powers:—Accrediting and receiving ministers.

**Germany.**—[The Emperor shall] accredit ambassadors and receive them. [Art. 11, § 1.]

**United States.**— . . . he [the President] shall receive Ambassadors and other public Ministers; . . . [Art. II, Sec. 3.]

## § 413. Foreign powers:—Consular system.

**Germany.**—X.—CONSULAR AFFAIRS. [Title X.]

[Under the supervision and legislative control of the Empire shall be] likewise the organization of a general consular representation to be maintained by the Empire. [Art. 4, § 7.]

The Emperor shall have the supervision of all consular affairs of the German Empire, and he shall appoint consuls, after hearing the committee of the Federal Council on Trade and Commerce. [Art. 56, § 1.]

## § 414. Foreign powers:—Consular system;—State consulates.

**Germany.**—No new State consulates are to be established within the jurisdiction of the German consuls. German consuls shall perform the functions of State consuls for the States of the Union not represented in their district. All the State consulates now existing shall be abolished as soon as the organization of the German consulates shall be completed in such a manner, that the representation of the separate interests of all the Federal States shall be recognized by the Federal Council as satisfactorily secured by the German consulates. [Art. 56, § 2.]

## § 415. Foreign powers:—Treaties;—Negotiations.

*Special provisions as to treaties of peace: § 424.*

**Germany.**—[The Emperor shall] enter into alliances and other conventions with foreign countries, . . . [Art. 11, § 1.]

**Switzerland.**—[The Confederation has the sole right] of concluding alliances and treaties with foreign powers, particularly treaties relating to tariffs and commerce. [Art. 8.]

[Within the competence of the two Councils are] Alliances and treaties with foreign powers, . . . [Art. 85, § 5.]

*Special limitation on commercial treaties: § 376.*

**United States.**—He [the President] shall have Power, . . . to make Treaties, . . . [Art. II, Sec. 2, § 2.]

**§ 416. Foreign powers: — Treaties; — Ratification.**

**Germany.** — So far as treaties with foreign countries refer to matters which, according to Article 4, are to be regulated by imperial legislation, the consent of the Federal Council shall be required for their conclusion, and the approval of the Diet shall be necessary to render them valid. [*Art. 11, § 3.*]

**United States.** — [The President shall have Power] by and with the Advice and Consent of the Senate, [to make Treaties,] provided two thirds of the Senators present concur; . . . [*Art. II, Sec. 2, § 2.*]

**§ 417. Foreign powers: — Treaties; — Execution.**

**Canada.** — The Parliament and Government of Canada shall have all Powers necessary or proper for performing the Obligations of Canada or of any Province thereof, as Part of the British Empire, towards Foreign Countries, arising under Treaties between the Empire and such Foreign Countries. [*Art. 132.*]

**§ 418. Foreign powers: — Treaties; — Forbidden to States.**

**Switzerland.** — No military capitulations shall be made. [*Art. 11.*]

**United States.** — No State shall enter into any Treaty, Alliance, or Confederation; . . . [*Art. I, Sec. 10, § 1.*]

[No State shall, without the Consent of Congress, enter into any Agreement or Compact] with a foreign Power, or . . . [*Art. I, Sec. 10, § 3.*]

**§ 419. Foreign powers: — Treaties; — Permitted to States.**

**Switzerland.** — *Examination of Cantonal treaties by the Federal Council: § 278.*

By exception the Cantons preserve the right of concluding treaties with foreign powers, respecting the administration of public property, and border and police intercourse; but such treaties shall contain nothing contrary to the Confederation or to the rights of other Cantons. [*Art. 9.*]

Official intercourse between Cantons and foreign governments, or their representatives, shall take place through the Federal Council.

Nevertheless, the Cantons may correspond directly with the inferior officials and officers of a foreign State, in regard to the subjects enumerated in the preceding article. [*Art. 10.*]

**§ 420. Foreign powers: — Interstate treaties.**

**Switzerland.** — All separate alliances and all treaties of a political character between the Cantons are forbidden.

On the other hand the Cantons have the right to make conventions among themselves upon legislative, administrative, or judicial subjects; in all cases they shall bring such conventions to the attention of the federal officials, who are authorized to prevent their execution, if they contain anything contrary to the Confederation, or to the rights of other Cantons. Should such not be the case, the covenanting Cantons are authorized to require the coöperation of the federal officials in carrying out the convention. [*Art. 7.*]

**United States.** — [No State shall, without the Consent of Congress,] enter into any Agreement or Compact with another State, or . . . [*Art. I, Sec. 10, § 3.*]

**§ 421. Foreign powers: — State treaties; — Approval of.**

**Switzerland.** — . . . and also [within the competence of the two Councils are] the approval of treaties made by the Cantons between themselves or with foreign powers; nevertheless the treaties made by the Cantons shall be brought before the Federal Assembly only in case the Federal Council or another Canton protests. [*Art. 85, § 5.*]

**§ 422. Foreign powers: — Protection of citizens abroad.**

**Germany.** — *Claim upon imperial protection: § 318.*

## MILITARY POWERS.

**Germany.**—XI.—MILITARY AFFAIRS OF THE EMPIRE. [*Title XI.*]

FINAL PROVISION OF SECTION XI.

§ 423. War powers:—General.<sup>1</sup>

**Canada.**—[The exclusive Legislative Authority of the Parliament extends to] Militia, Military and Naval Service and Defence. [*Art. 91, § 7.*]

**Switzerland.**—The Confederation exercises control over the army and the material of war provided by law.

In cases of danger, the Confederation has also the exclusive and direct control of men not included in the federal army, and of all other military resources of the Cantons. [*Art. 19, §§ 3, 4.*]

**United States.**—[The Congress shall have Power] To raise and support Armies, . . . [*Art. I, Sec. 8, § 12.*]

§ 424. War powers:—Declaration of war and conclusion of peace.

**Germany.**—[The Emperor shall] declare war and conclude peace in the name of the same [the Empire.]

For a declaration of war in the name of the Empire, the consent of the Federal Council shall be required, except in case of an attack upon the territory of the Confederation or its coasts. [*Art. 11, §§ 1, 2.*]

**Switzerland.**—The Confederation has the sole right of declaring war, of making peace, and . . . [*Art. 8.*]

[Within the competence of the two Councils are] the declaration of war and the conclusion of peace. [*Art. 85, § 6.*]

*Cantons may interfere in case of invasion: § 71.*

**United States.**—[The Congress shall have Power] To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water; . . . [*Art. I, Sec. 8, § 11.*]

[No State shall without the Consent of Congress] engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay. [*Art. I, Sec. 10, § 3.*]

[No State shall] grant Letters of Marque and Reprisal; . . . [*Art. I, Sec. 10, § 1.*]

§ 425. War powers:—Army;—In time of peace.

**Germany.**—The number of the German army in time of peace shall be fixed until the 31st of December, 1871, at 1 per cent. of the population of 1867, and shall be furnished by the several Federal States in proportion to their population. After the above date the strength of the army in time of peace shall be fixed by legislation. [*Art. 60.*]

**Switzerland.**—The Confederation has no right to keep up a standing army [*Art. 13, § 1.*]

§ 426. War powers:—Army;—Powers of the States.

**Germany.**—The provisions contained in this section are to be applied in Bavaria, according to the provisions of the treaty of Nov. 23, 1870; in Wurtemberg, according to provisions of the military convention of Nov. 21-25, 1870. [*Final Provision of Sec. 11.*]

**Switzerland.**—The composition of these bodies of troops, the maintenance of their effective strength, . . . belong to the Cantons, subject to general provisions which shall be established by the Confederation. [*Art. 21, § 2.*]

The Cantons have authority over the military forces of their territory, so far as this right is not limited by the Federal Constitution or laws. [*Art. 19, § 5.*]

<sup>1</sup> **Germany.** The organization of the army and navy of the Empire. [*Art. 4, § 14: omitted in James' translation.*]

**United States.**—[The Congress shall have Power] To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress. [*Art. I, Sec. 8, § 16.*]

**§ 427. War powers:—Army;—Limitation on States.**

**Switzerland.**—No Canton or Half-Canton shall, without the permission of the federal government, keep up a standing force of more than three hundred men; the mounted police [*gendarmerie*] is not included in this number. [*Art. 13, § 2.*]

**United States.**—[No State shall, without the Consent of Congress] keep Troops, or . . . in time of Peace, . . . [*Art. I, Sec. 10, § 3.*]

**§ 428. War powers:—Army;—Administration.**

**Germany.**—It shall be the duty and the right of the Emperor to take care that throughout the German army, all divisions be kept full and ready to take the field, and that uniformity be established and maintained in regard to organization and formation, equipment and command; in the training of the men, and in the qualifications of the officers. For this purpose the Emperor shall be authorized to satisfy himself at any time by inspection, of the condition of the several contingents, and to order the correction of existing defects.

The Emperor shall determine the strength, composition and division of the contingents of the Imperial army, and also the organization of the Landwehr, and he shall have the right to determine the garrisons within the territory of the Union, as also to mobilize any portion of the army.

In order to maintain the necessary unity in the administration, care, arming and equipment of all divisions of the German army, all orders hereafter issued for the Prussian army shall be communicated in due form for their observance to the commanders of the remaining contingents through the Committee on the Army and Fortifications, provided for in Article 8, No. 1. [*Art. 63, §§ 3-5.*] *Administration of the Navy: § 441.*

**Switzerland.**—The laws on the organization of the army are passed by the Confederation. The enforcement of military laws in the Cantons is intrusted to the cantonal officials, within limits which shall be fixed by federal legislation, and under the supervision of the Confederation. [*Art. 20, § 1.*]

**§ 429. War powers:—Army;—Command.**

**Canada.**—The Command-in-Chief of the Land and Naval Militia, and of all Naval and Military Forces, of and in Canada, is hereby declared to continue and be vested in the Queen. [*Art. 15.*]

**Germany.**—The total land force of the Empire shall form one army, which in war and in peace, shall be under the command of the Emperor. [*Art. 63, § 1.*]

They [The Princes and Senates] are the chiefs of all the troops belonging to their respective territories, and are entitled to the honors connected therewith. They shall have the right to hold inspections at any time, and shall receive, besides the regular reports and announcements of changes, timely information of all promotions and appointments concerning their respective contingents, in order to provide for their publication by State authority as required. [*Art. 66, § 1.*]

All German troops are bound implicitly to obey the orders of the Emperor. This obligation shall be included in the military oath. [*Art. 64, § 1.*]

*Command over the Navy: § 441.*

**Switzerland.**—[Within the competence of the two Councils are] The power of controlling the federal army. [*Art. 85, § 9.*]



In cases of urgency, and when the Federal Assembly is not in session, the Federal Council has power to raise the necessary troops and to employ them, with the reservation that it shall immediately summon the Councils if the number of troops exceeds two thousand men, or if they remain in arms more than three weeks. [*Art. 102, § 11.*]

. . . and also [within the competence of the two Councils are the election] of the Commander-in-Chief of the federal army. [*Art. 85, § 4.*]

**United States.**—The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; . . . [*Art. II, Sec. 2, § 1.*]

**§ 430. War powers:—Army;—Officers.**

**Germany.**—The commander-in-chief of a contingent, as well as all officers commanding troops of more than one contingent and all commanders of fortresses, shall be appointed by the Emperor. The officers appointed by the Emperor shall take the military oath to him. The appointment of generals, or of officers performing the duties of generals, in a contingent, shall be in each case subject to the approval of the Emperor. [*Art. 64, § 2.*]

*Appointing officers of the Navy: § 441.*

In the transfer of officers, with or without promotion, to positions which are to be filled by him in the service of the Empire, be it in the Prussian army or in other contingents, the Emperor has the right to select from the officers of all the contingents of the army of the Empire. [*Art. 64, § 3.*]

In the absence of special agreement, the Princes of the Empire and the Senates shall appoint the officers of their respective contingents, subject to the restriction of Article 64. [*Art. 66, § 1.*]

**Switzerland.**—[To the Cantons belong] the appointment and promotion of officers of these bodies of troops, . . . [*Art. 21, § 2.*]

**United States.**— . . . reserving to the States respectively the Appointment of the Officers [of the Militia], . . . [*Art. I, Sec. 8, § 15.*]

**§ 431. War powers:—Army;—Equipment.**

**Switzerland.**—[To the Confederation pertains] the arming of troops. [*Art. 20, § 2.*]

The furnishing and maintenance of clothing and equipment is within the power of the Cantons; but the Cantons shall be credited with the expenses therefor, according to a regulation to be established by federal legislation. [*Art. 20, § 3.*]

Each soldier shall receive without expense his first equipment, clothing, and arms. The weapon remains in the hands of the soldier, under conditions which shall be prescribed by federal legislation. [*Art. 18, § 3.*]

**§ 432. War powers:—Army;—Instruction.**

**Switzerland.**—Military instruction of every kind pertains to the Confederation. The same applies to . . . [*Art. 20, § 2.*]

**§ 433. War powers:—Army;—Details of uniform.**

**Germany.**—The regiments, &c., throughout the whole German army shall bear continuous numbers. In adopting a uniform, the principal colors and cut of the Prussian uniform, shall serve as a pattern for the other contingents of the army. It is left to commanders of contingent forces to choose the external badges, cockades, &c. [*Art. 63, § 2.*]

**§ 434. War powers:—Army;—Composition.**

**Switzerland.**—The federal army is composed:

(a) Of the cantonal military corps.

(b) Of all Swiss who do not belong to such military corps, but are nevertheless liable to military service. [*Art. 19, §§ 1, 2.*]

So far as military reasons do not prevent, bodies of troops shall be formed out of the soldiery of the same Cantons. [*Art. 21, § 1.*]

**§ 435. War powers:—Military service.**

**Germany.**—Every German is subject to military duty, and in the discharge of this duty no substitute can be accepted. [*Art. 57.*]

With regard to the performance of military service in the various States, the necessary laws will be passed hereafter by the Empire. [*Art. 3.*]

*Service in the navy: § 441.*

**Switzerland.**—Every Swiss is bound to perform military service. [*Art. 18, § 1.*]

The Confederation shall enact uniform provisions as to an exemption tax. [*Art. 18, § 4.*]

**§ 436. War powers:—Term of service.**

**Germany.**—Every German capable of bearing arms shall belong for seven years to the standing army (ordinarily from the end of his twentieth to the beginning of his twenty-eighth year); the first three years in active service, the last four years in the reserve; and during the next five years he shall belong to the Landwehr (national guard). In those States of the Union in which heretofore a longer term of service than twelve years was required by law, the gradual reduction of the required time of service shall take place only so far as is compatible with a due regard to the war-footing of the army of the Empire.

As regards the emigration of men belonging to the reserve, only those provisions shall be in force which apply to the emigration of members of the Landwehr. [*Art. 59.*]

**§ 437. War powers:—Pensions.**

**Switzerland.**—Soldiers who lose their lives or suffer permanent injury to their health, in consequence of federal service, are entitled to aid from the Confederation for themselves or their families, in case of need. [*Art. 18, § 2.*]

**§ 438. War powers:—Discipline.**

**Germany.**—After the publication of this Constitution the complete Prussian system of military legislation shall be introduced without delay throughout the Empire, both the statutes themselves and the regulations, instructions, and ordinances issued for their execution, explanation or completion; thus, in particular, the military penal code of April 3, 1845; the military system of penal procedure of April 3, 1845; the ordinance concerning the courts of honor of July 20, 1843; the regulations with respect to recruiting, time of service, matters relating to the care and subsistence, to the quartering of troops, claims for damages, mobilizing, etc., in times of peace and war. The military code relating to religious observance is, however, excepted.

When a uniform organization of the German army for war purposes shall have been established, a comprehensive military code for the Empire shall be submitted to the Diet and the Federal Council for their action, in accordance with the Constitution. [*Art. 61.*]

**United States.**—[The Congress shall have Power] To make Rules for the Government and Regulation of the land and naval Forces; . . . [*Art. I, Sec. 8, § 14.*]

**§ 439. War powers:—Martial law.**

**Germany.**—The Emperor shall have the power, if public security within the Federal territory demands it, to declare martial law in any part of the Empire; and until the publication of a law regulating the occasions, the form of announcement, and the effects of such a declaration, the provisions of the Prussian law of June 4, 1851, shall be considered in force. [*Art. 68.*]

**United States.**—*Power of Congress to suspend Habeas Corpus: § 330.*

**§ 440. War powers:—Army;—Used for keeping order.***Repelling invasions: §§ 71, 453. Maintenance of internal order: § 453.**Suppression of domestic violence in a State: § 454.***§ 441. War powers:—Navy.**

**Germany.**—The navy of the Empire is a united one, under the supreme command of the Emperor. The Emperor is charged with its constitution and organization; he shall appoint the officers and officials of the navy, and in his name these and the seamen shall be sworn in.

The harbor of Kiel and the harbor of the Jade are Imperial war-harbors.

The expenditure required for the establishment and maintenance of the navy and the institutions connected therewith shall be defrayed from the Treasury of the Empire.

All seafaring men of the Empire, including machinists and hands employed in ship-building, are exempt from serving in the army, but are obliged to serve in the imperial navy.

The distribution of requisitions to supply the ranks of the navy shall be made according to the actual seafaring population, and the number furnished in accordance herewith by each State shall be deducted from the number otherwise required for the army. [*Art. 53.*]

**United States.**—To provide and maintain a Navy; . . . [*Art. I, Sec. 8, § 13.*]

[No State shall, without the Consent of Congress keep] Ships of War [in time of Peace.] [*Art. I, Sec. 10, § 3.*]

**§ 442. War powers:—Expenses.**

**Germany.**—The costs and the burden of all the military system of the Empire are to be borne equally by all the Federal States and their subjects, and no special privileges or burdens upon the several States or classes are admissible. Where an equal distribution of the burdens cannot be effected *in natura* without prejudice to the public welfare, the equalization shall be effected by legislation in accordance with the principles of justice. [*Art. 58.*]

For the purpose of defraying the expense of the whole German army, and the institutions connected therewith, the sum of 225 thalers shall be placed yearly at the disposal of the Emperor until the 31st of December, 1871, for each man in the army on the peace-footing, according to Article 60. (See Section 12.)

After the 31st December, 1871, the payment of these contributions by the several States to the Imperial Treasury must be continued. The strength of the army in time of peace, which has been temporarily fixed in Article 60, shall be taken as a basis for calculating the amounts due until it shall be altered by a law of the Empire.

The expenditure of this sum for the Imperial army and its establishments shall be determined by a budget law.

In determining the budget of military expenditure, the lawfully established organization of the Imperial army, in accordance with this Constitution, shall be taken as a basis. [*Art. 62.*]

The unexpended portion of the military appropriation shall under no circumstances fall to the share of a single government, but at all times to the Treasury of the Empire. [*Art. 67.*]

*Expenses of the navy: § 441.*

*Temporary submission of estimates for information only: § 371.*

**Switzerland.**—Those Cantons which, at the going into effect of Article 20 of the Constitution, have not fulfilled the military obligations which are imposed upon them by the former Constitution, or by federal laws, shall be bound to carry them out at their own expense. [*Temporary Provisions, Art. I, § 3.*]

**United States.** — . . . but no Appropriation of Money to that Use [to raise and support Armies] shall be for a longer Term than two Years; . . . [*Art. I, Sec. 8, § 12.*]

## POLICE POWERS.

### § 443. Police powers: — Gaming houses.

**Switzerland.** — The opening of gaming houses is forbidden. Those which now exist shall be closed Dec. 31, 1877.

The concessions which may have been granted or renewed since the beginning of the year 1871 are declared invalid. [*Art. 35, §§ 1-2.*]

### § 444. Police powers: — Lotteries.

**Switzerland.** — The Confederation may also take necessary measures concerning lotteries. [*Art. 35, § 3.*]

### § 445. Police powers: — Protection of laborers.

**Switzerland.** — The Confederation has power to enact uniform provisions as to the labor of children in factories, and as to the duration of labor fixed for adults therein, and as to the protection of workmen against the operation of unhealthy and dangerous manufactures. [*Art. 34, § 1.*]

### § 446. Police powers: — Game laws.

**Switzerland.** — The Confederation has power to make legislative enactments for the regulation of the right of fishing and hunting, particularly with a view to the preservation of the large game in the mountains, as well as for the protection of birds useful to agriculture and forestry. [*Art. 25.*]

### § 447. Police powers: — Sanitary.

**Germany.** — [Under the supervision and legislative control of the Empire shall be] Police regulation as to medical and veterinary matters. [*Art. 4, § 15.*]

**Switzerland.** — Legislation concerning measures of sanitary police against epidemic and cattle diseases, causing a common danger, is included in the powers of the Confederation. [*Art. 69.*]

### § 448. Police powers: — Special branches of administration.

**Switzerland.** — *Dike and forest police*: § 384.

### § 449. Police powers: — Practice of professions.

**Switzerland.** — The Cantons may require proofs of competency from those who desire to practice a liberal profession.

Provision shall be made by federal legislation by which such persons may obtain certificates of competency which shall be valid throughout the Confederation. [*Art. 33.*]

Those persons who practice a liberal profession, and who, before the publication of the federal law provided for in Article 33, have obtained a certificate of competence from a Canton or a joint authority representing several Cantons, may pursue that profession throughout the Confederation. [*Temporary provisions: Art. 5.*]

### § 450. Police powers: — Burial.

**Switzerland.** — The control of places of burial is subject to the civil authority. It shall take care that every deceased person may be decently interred. [*Art. 53, § 2.*]

### § 451. Police powers: — Charitable institutions.

**Canada.** — [In each Province the Legislature may exclusively make Laws in relation to] The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province, other than Marine Hospitals. [*Art. 92, § 7.*]

**Germany.** — *Provisions as to maintenance of local charitable institutions*: § 83.

## POWERS OF ENFORCEMENT.

## § 452. Enforcing powers:—General.

**Switzerland.**—[Within the competence of the two Councils are] Measures for the preservation of the Constitution, for carrying out the guaranty of the cantonal constitutions, and for fulfilling federal obligations. [*Art. 85, § 8.*]

## § 453. Enforcing powers:—Maintenance of order.

**Switzerland.**—[Within the competence of the two Councils are] measures for the internal safety of Switzerland, for the maintenance of peace and order; . . . [*Art. 85, § 7.*]

It [the Federal Council] watches over the internal safety of the Confederation, over the maintenance of peace and order. [*Art. 102, § 10.*]

**United States.**—[The Congress shall have Power] To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions; . . . [*Art. I, Sec. 8, § 15.*]

## § 454. Enforcing powers:—Domestic violence in the States.

**Germany.**—They [the Princes and Senates] shall also have the right to employ, for police purposes, not only their own troops, but all other divisions of the army of the Empire which are stationed in their respective territories. [*Art. 66, § 2.*]

**Switzerland.**—In case of internal disturbance, or if the danger is threatened by another Canton, the authorities of the Canton threatened shall give immediate notice to the Federal Council, in order that that body may take the measures necessary, within the limits of its power (*Art. 102, §§ 3, 10, 11*), or may summon the Federal Assembly. In extreme cases the authorities of the Canton are authorized, while giving immediate notice to the Federal Council, to ask the aid of other Cantons, which are bound to afford such aid.

If the executive of the Canton is unable to call for aid, the federal authority having the power may, and if the safety of Switzerland is endangered shall, intervene without requisition.

In case of federal intervention, the federal authorities shall take care that the provisions of Article 5 be observed.

The expenses shall be borne by the Canton asking aid or occasioning federal intervention, except when the Federal Assembly otherwise decides on account of special circumstances. [*Art. 16.*]

In the cases mentioned in Articles 15 and 16, every Canton is bound to afford undisturbed passage for the troops. The troops shall immediately be placed under federal command. [*Art. 17.*]

**United States.**— . . . and [the United States] on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) [shall protect each of them] against domestic Violence. [*Art. IV, Sec. 4.*]

## § 455. Enforcing powers:—Coercion of States.

**Germany.**—If the States of the Confederation do not fulfill their Constitutional duties, they may be compelled to do so by "execution." This "execution" shall be ordered by the Federal Council, and carried out by the Emperor. [*Art. 19.*]

## POWER OF AMENDMENT.

**Germany.** — XIV. — AMENDMENTS.

**Switzerland.** — III. AMENDMENT OF THE FEDERAL CONSTITUTION. [*Chapter III.*]

**§ 456. Power of amendment: — Manner of submission.**

**Germany.** — Amendments of the Constitution shall be made by legislative enactment.

[*Art. 78, § 1.*]

**Switzerland.** — The Federal Constitution may at any time be amended. [*Art. 118.*]

Amendment is secured through the forms required for passing federal laws. [*Art. 119.*]

[Within the competence of the two Councils are] The amendment of the federal Constitution. [*Art. 85, § 14.*]

When either Council of the Federal Assembly passes a resolution for amendment of the Federal Constitution and the other Council does not agree; or when fifty thousand Swiss voters demand amendment, the question whether the Federal Constitution ought to be amended is, in either case, submitted to a vote of the Swiss people, voting yes or no.

If in either case the majority of the Swiss citizens who vote pronounce in the affirmative, there shall be a new election of both Councils for the purpose of preparing amendments. [*Art. 120.*]

*State initiative in amendments: § 178.*

**United States.** — The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, . . . [*Art. V.*]

**§ 457. Power of amendment: — Ratification.**

**Germany.** — They [amendments to the Constitution] shall be considered as rejected when fourteen votes are cast against them in the Federal Council. [*Art. 78, § 1.*]

**Switzerland.** — The amended Federal Constitution shall be in force when it has been adopted by the majority of Swiss citizens who take part in the vote thereon and by a majority of the States.

In making up a majority of the States the vote of a Half-Canton is counted as half a vote.

The result of a popular vote in each Canton is considered to be the vote of the State. [*Art. 121.*]

**United States.** — . . . which [Amendments], in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; . . . [*Art. V.*]

**§ 458. Power of amendment: — Limitations.**

**Germany.** — The provisions of the Constitution of the Empire, by which certain rights are secured to particular States of the Union in their relation to the whole, shall only be modified with the consent of the States affected. [*Art. 78, § 2.*]

**United States.** — Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate. [*Art. V.*]

## APPENDIX B.

### KEY TO THE CONSPECTUS OF FEDERAL CONSTITUTIONS.

#### Explanation of arrangement.

The references are from the paragraphs of the original texts back to the classified arrangement in Appendix A. The consecutive paragraphs in each text are indicated by **bold-faced type**; the sub-sections of those paragraphs by the mark ¶ and Roman figures; the paragraphs of the Conspectus by the mark § and *italics*.

#### § 459. British North America Act.

Title: § 62. — Preamble, ¶¶ 1-4: § 63; ¶ 5: § 64. — Art. 1: § 66. —  
 2: § 208. — 3: § 67. — 4: § 67. — 5: § 281. — 6: § 281. — 7: § 281. —  
 8: § 408. — 9: § 208. — 10: § 208. — 11: § 222. — 12: § 228. — 13: § 222.  
 — 14: § 216. — 15: § 429. — 16: § 285. — 17: § 105. — 18: § 110. —  
 19: § 113. — 20: § 113. — 21: § 154. — 22: § 154. — 23: § 155. —  
 24: § 152. — 25: § 152. — 26: § 152. — 27: § 152. — 28: § 154. —  
 29: § 160. — 30: § 158. — 31: § 157. — 32: § 153. — 33: § 159. —  
 34: § 165. — 35: § 169. — 36: § 170. — 37: § 127. — 38: § 140. —  
 39: § 126. — 40: § 127. — 41: § 132. — 42: § 132. — 43: § 132. —  
 44: § 135. — 45: § 135. — 46: § 135. — 47: § 135. — 48: § 145. —  
 49: § 147. — 50: §§ 133, 134. — 51: § 128. — 52: § 128. — 53: § 179.  
 — 54: § 179. — 55: § 182. — 56: §§ 183, 188. — 57: § 187. — 58: § 75.  
 — 59: § 75. — 60: § 75. — 61: § 75. — 62: § 75. — 63: § 75. —  
 64: § 75. — 65: § 75. — 66: § 75. — 67: § 74. — 68: § 75. — 69: § 74.  
 — 70: § 74. — 71: § 74. — 72: § 74. — 73: § 74. — 74: § 74. —  
 75: § 74. — 76: § 74. — 77: § 74. — 78: § 74. — 79: § 74. — 80: § 74.  
 — 81: § 74. — 82: § 74. — 83: § 74. — 84: § 74. — 85: § 74. —  
 86: § 74. — 87: § 74. — 88: § 74. — 89: § 74. — 90: § 74. — 91: §§ 191,  
 270; ¶ 1: § 367; ¶ 2: § 355; ¶ 3: § 352; ¶ 4: § 232; ¶ 5: § 392; ¶ 6: § 408;  
 ¶ 7: § 423; ¶ 8: § 374; ¶ 9: § 377; ¶ 10: § 376; ¶ 11: § 376; ¶ 12: § 379;  
 ¶ 13: § 383; ¶ 14: § 399; ¶ 15: § 404; ¶ 16: § 404; ¶ 17: § 400; ¶ 18: § 402;  
 ¶ 19: § 402; ¶ 20: § 405; ¶ 21: § 409; ¶ 22: § 401; ¶ 23: § 401; ¶ 24: § 294;  
 ¶ 25: §§ 291, 295; ¶ 26: §§ 312, 313; ¶ 27: § 333; ¶ 28: § 333; ¶ 29: § 275;  
 ¶ 30: § 277. — 92: § 86; ¶ 1: § 97; ¶ 2: § 355; ¶ 3: § 367; ¶ 4: § 232;  
 ¶ 5: § 289; ¶ 6: § 334; ¶ 7: § 451; ¶ 8: § 88; ¶ 9: § 355; ¶ 10: § 384;  
 ¶ 11: § 406; ¶ 12: § 312; ¶ 13: § 402; ¶ 14: § 89; ¶ 15: § 334; ¶ 16: § 87. —  
 93: § 342; ¶¶ 1-3: § 345; ¶ 4: § 343. — 94: § 402. — 95: § 410. — 96: § 76.  
 — 97: § 76. — 98: § 76. — 99: § 76. — 100: § 76. — 101: §§ 247, 248.  
 — 102: § 350. — 103: § 373. — 104: § 373. — 105: § 373. — 106: § 373.  
 — 107: § 368. — 108: § 286. — 109: § 289. — 110: § 368. — 111: § 368.  
 — 112: § 368. — 113: § 79. — 114: § 368. — 115: § 368. — 116: § 368.  
 — 117: § 286. — 118: § 372. — 119: § 372. — 120: § 372. — 121: § 361.  
 — 122: § 360. — 123: § 361. — 124: § 360. — 125: § 354. — 126: § 351.  
 — 127: § 156. — 128: § 112. — 129: § 78. — 130: § 232. — 131: § 231.  
 — 132: § 417. — 133: § 305. — 134: § 75. — 135: § 75. — 136: § 77. —  
 137: § 77. — 138: § 77. — 139: § 77. — 140: § 77. — 141: § 79. —  
 142: § 79. — 143: § 79. — 144: § 75. — 145: § 386. — 146: § 282. —  
 147: § 154.

## § 460. Imperial Constitution of Germany.

Title: § 62.—Preamble: § 63.—Art. 1: §§ 64, 281.—2: §§ 190, 271, 277.—3, ¶ 1: §§ 290, 307, 308; ¶ 2: § 309; ¶ 3: § 83; ¶ 4: § 83; ¶ 5: § 435; ¶ 6: § 318.—4, ¶ 1: §§ 191, 292, 295, 383, 407; ¶ 2: §§ 352, 375; ¶ 3: §§ 399, 400; ¶ 4: § 404; ¶ 5: § 401; ¶ 6: § 401; ¶ 7: §§ 376, 377, 413; ¶ 8: §§ 384, 385; ¶ 9: § 383; ¶ 10: §§ 392, 393; ¶ 11: § 80; ¶ 12: § 80; ¶ 13: § 331; ¶ 14: § 423; ¶ 15: § 447; ¶ 16: §§ 298, 299.—5, ¶ 1: §§ 105, 180; ¶ 2: § 184.—6: §§ 152, 154, 168.—7, ¶ 1: § 173; ¶ 2: § 174; ¶ 3: § 174; ¶ 4: § 172; ¶ 5: §§ 163, 170, 171; ¶ 6: § 170.—8: § 167.—9: § 156, 164.—10: § 162.—11, ¶ 1: §§ 208, 412, 415, 424; ¶ 2: §§ 411, 424; ¶ 3: § 416.—12: § 114.—13: §§ 113, 114.—14: § 166.—15: § 165.—16: § 176.—17: §§ 229, 239.—18, ¶ 1: § 231; ¶ 2: § 232.—19: § 455.—20, ¶ 1: § 129; ¶ 2: § 127.—21: § 126.—22: § 144.—23: §§ 148, 150.—24: § 133.—25: § 134.—26: § 141.—27: §§ 131, 135, 142, 143.—28, ¶ 1: §§ 145, 146; ¶ 2: § 146.—29: § 138.—30: § 139.—31: § 139.—32: § 137.—33, ¶ 1: § 283; ¶ 2: § 361.—34: § 283.—35, ¶ 1: §§ 359, 363; ¶ 2: § 365.—36: § 347.—37: § 363.—38, ¶ 1: § 349; ¶ 2: § 349; ¶ 3: § 349; ¶ 4: § 358; ¶ 5: § 365.—39: § 348.—40: § 360.—41: § 386.—42: § 387.—43: §§ 387, 388.—44: § 388.—45: § 389.—46, ¶ 1: § 389; ¶¶ 2, 3: § 391.—47: § 390.—48: §§ 392, 394.—49: § 396.—50, ¶¶ 1-3: §§ 394; ¶¶ 4, 5: § 395; ¶ 6: § 393.—51: § 396.—52: § 393.—53: § 441.—54, ¶ 1: § 377; ¶ 2: § 377, ¶ 3: §§ 378, 384; ¶ 4: § 384; ¶ 5: § 376.—55: § 377.—56, ¶ 1: § 415; ¶ 2: § 414.—57: § 435.—58: § 442.—59: § 436.—60: § 425.—61: § 438.—62: § 442.—63, ¶ 1: § 429; ¶ 2: § 433; ¶¶ 3-5: § 428.—64, ¶ 1: § 429; ¶¶ 2, 3: § 430.—65: § 286.—66, ¶ 1: §§ 429, 430; ¶ 2: § 454.—67: § 442.—68: § 439.—Final Provision of Section XI: § 426.—69: § 346.—70: §§ 350, 358.—71: § 371.—72: § 346.—73: § 367.—Final Provision of Section XII: § 346.—74: § 257.—75, ¶ 1: § 247; ¶ 2: §§ 247, 249.—76, ¶ 1: § 260; ¶ 2: § 261.—77: § 262.—78, ¶ 1: §§ 456, 457; ¶ 2: § 458.

## § 461. Federal Constitution of the Swiss Confederation.

Title: § 62.—Preamble: §§ 63, 64.—Art. 1: § 281.—2: § 63.—3: § 276.—4: § 306.—5: § 69.—6: § 70.—7: § 420.—8: §§ 415, 424.—9: § 419.—10: § 419.—11: § 418.—12: § 306.—13, ¶ 1: § 425; ¶ 2: § 427.—14: § 260.—15: § 71.—16: § 454.—17: § 454.—18, ¶ 1: § 435; ¶ 2: § 437; ¶ 3: § 431; ¶ 4: § 435.—19, ¶¶ 1, 2: § 434; ¶¶ 3, 4: § 423; ¶ 5: § 426.—20, ¶ 1: § 428; ¶ 2: § 432; ¶ 3: § 431.—21, ¶ 1: § 434; ¶ 2: §§ 426, 430.—22: § 286.—23: § 384.—24: § 384.—25: § 446.—26: § 385.—27, ¶ 1: § 344; ¶ 2: § 342; ¶ 3: § 345; ¶ 4: § 343.—28: § 359.—29, ¶ 1: §§ 362, 376; ¶¶ 2, 3: § 376.—30, ¶ 1: § 359; ¶ 2: § 360; ¶¶ 3, 4: § 372.—31: § 383.—32: § 364.—32 (ii), ¶¶ 1, 2: § 363; ¶¶ 3, 4: § 365.—33: § 449.—34, ¶ 1: § 445; ¶ 2: §§ 381, 407.—35, ¶¶ 1, 2: § 443; ¶ 3: § 444.—36, ¶ 1: § 392; ¶ 2: § 396; ¶ 3: § 397; ¶ 4: § 390.—37: § 384.—38: § 399.—39, ¶ 1: § 404; ¶ 2: § 405.—40: § 400.—41: § 403.—42, ¶¶ (a)-(e): § 350; ¶ (f): §§ 350, 358.—43, ¶ 1: § 290; ¶¶ 2, 3: § 315; ¶¶ 4, 5: § 317; ¶ 6: § 309.—44, ¶ 1: § 293; ¶ 2: §§ 291, 293.—45, ¶ 1: § 308; ¶¶ 2-4: § 310; ¶ 5: § 293; ¶ 6: § 309; ¶ 7: § 310.—46: § 402.—47: § 308.—48: § 83.—49, ¶¶ 1, 2: § 336; ¶ 3: § 345; ¶ 4: § 337; ¶ 5: § 341; ¶ 6: § 336.—50, ¶ 1: § 338; ¶¶ 2-4: § 339.—51: § 340.—52: § 340.—53, ¶ 1: § 314; ¶ 2: § 450.—54: § 312.—55: § 298.—56: § 299.—57: § 300.—58: § 321.—59, ¶¶ 1, 2: § 409; ¶ 3: § 333.—60: § 307.—61: § 80.—62: § 357.—63: § 295.—64, ¶ 1: § 320; ¶ 2: § 402; ¶ 3: § 401; ¶ 4: § 401; ¶ 5: § 409; ¶ 6: § 89.—65: § 333.—66: § 319.—67: § 81.—68: § 291.—69: § 447.—70: § 295.—71: § 105.—



72, ¶ 1: §§ 128, 129; ¶ 2: § 128. — 73: § 129. — 74: § 315. — 75: § 125.  
 — 76: § 133. — 77: § 126. — 78, ¶¶ 1-3: § 135; ¶ 4: § 147. — 79: § 137.  
 — 80: § 152. — 81: § 156. — 82, ¶¶ 1-3: § 165; ¶ 4: § 171. — 83: § 161.  
 — 84: § 271. — 85: § 191; ¶ 1: § 106; ¶ 2: § 271; ¶ 3: § 233; ¶ 4: §§ 214,  
 227, 233, 251; ¶ 5: §§ 415, 421; ¶ 6: § 411, 424; ¶ 7: §§ 70, 246, 453; ¶ 8: § 452;  
 ¶ 9: § 429; ¶ 10: §§ 346, 367; ¶ 11: § 269; ¶ 12: § 263; ¶ 13: § 263; ¶ 14: § 456.  
 — 86, ¶ 1: § 113; ¶ 2: § 114. — 87: § 121. — 88: § 122. — 89, ¶ 1: § 180;  
 ¶ 2: § 189. — 90: § 189. — 91: § 111. — 92: § 181. — 93, ¶ 1: § 177;  
 ¶ 2: § 178. — 94: § 120. — 95: § 208. — 96, ¶ 1: §§ 210, 214, 217; ¶ 2: § 217;  
 ¶ 3: § 215. — 97: § 210. — 98: § 225. — 99: § 219. — 100: § 226. —  
 101: § 242. — 102, § 228; ¶ 1: § 228; ¶ 2: § 239; ¶ 3: § 70; ¶ 4: § 176;  
 ¶ 5: §§ 239, 260; ¶ 6: § 231; ¶ 7: § 278; ¶ 8: § 411; ¶ 9: § 411; ¶ 10: § 453;  
 ¶ 11: § 429; ¶ 12: § 230; ¶ 13: § 278; ¶ 14: § 346; ¶ 15: § 234; ¶ 16: §§ 176,  
 241. — 103: § 222. — 104: § 223. — 105: § 227. — 106, ¶ 1: § 247;  
 ¶ 2: § 324. — 107, ¶ 1: § 251; ¶ 2: § 247. — 108: § 250. — 109: § 254.  
 — 110, ¶¶ 1-4: § 258; ¶ 5: § 261. — 111: § 256. — 112: § 257. — 113, ¶ 1:  
 § 259; ¶ 2: § 260; ¶ 3: § 262; ¶ 4: § 263; ¶ 5: § 266. — 114: § 255. —  
 115: § 285. — 116: § 305. — 117: § 234. — 118: § 456. — 119: § 456.  
 — 120: § 456. — 121: § 457. — Temporary Provisions, Art. 1, ¶ 1: § 396;  
 ¶ 2: § 356; ¶ 3: § 442. — 2: § 277. — 3: § 249. — 4: § 342. — 5: § 449.  
 — 6: § 365. — Added after Temporary Provisions: § 65.

#### § 462. Constitution of the United States of America.

Title: § 62. — Preamble: §§ 63, 64. — Art. I, SEC. 1: § 105. — SEC. 2, ¶ 1:  
 §§ 129, 133, 315; ¶ 2: §§ 125, 151; ¶ 3: §§ 127, 128, 408; ¶ 4: § 130; ¶ 5: § 135.  
 — SEC. 3, ¶ 1: §§ 152, 154, 160, 168; ¶ 2: §§ 153, 160; ¶ 3: § 155; ¶ 4: § 165;  
 ¶ 5: § 165; ¶ 6: § 175; ¶ 7: § 327. — SEC. 4, ¶ 1: § 106; ¶ 2: § 113. — SEC. 5,  
 ¶ 1: §§ 107, 121; ¶ 2: §§ 116, 117; ¶ 3: §§ 118, 123; ¶ 4: § 115. — SEC. 6, ¶ 1:  
 §§ 109, 110; ¶ 2: § 108. — SEC. 7, ¶ 1: § 178; ¶ 2: §§ 182, 183, 184, 185, 186;  
 ¶ 3: § 181. — SEC. 8, ¶ 1: §§ 191, 352, 353, 354; ¶ 2: § 367; ¶ 3: §§ 292, 376, 383;  
 ¶ 4: §§ 291, 409; ¶ 5: § 399; ¶ 6: § 333; ¶ 7: § 392; ¶ 8: § 401; ¶ 9: § 248;  
 ¶ 10: § 333; ¶ 11: § 424; ¶ 12: §§ 423, 441, 442; ¶ 13: § 438; ¶ 14: § 438; ¶ 15:  
 §§ 430, 453; ¶ 16: § 426; ¶ 17: §§ 285, 286; ¶ 18: § 273. — SEC. 9, ¶ 1: § 380;  
 ¶ 2: § 330; ¶ 3: § 329; ¶ 4: § 354; ¶ 5: §§ 354, 400; ¶ 6: § 378; ¶ 7: §§ 346, 371;  
 ¶ 8: § 306. — SEC. 10, ¶ 1: §§ 306, 329, 402, 404, 405, 418, 424; ¶ 2: § 360;  
 ¶ 3: §§ 357, 418, 420, 424, 427, 441. — Art. II, SEC. 1, ¶ 1: §§ 208, 211, 217, 222;  
 ¶ 2: § 211; ¶ 3: §§ 114, 176; ¶ 4: § 211; ¶ 5: § 210; ¶ 6: § 215; ¶ 7: § 219;  
 ¶ 8: § 221. — SEC. 2, ¶ 1: §§ 246, 429; ¶ 2: §§ 231, 233, 415, 416; ¶ 3: § 231. —  
 SEC. 3: §§ 231, 239, 241, 412. — SEC. 4: § 218. — Art. III, SEC. 1: §§ 247, 248,  
 252, 253. — SEC. 2, ¶ 1: §§ 255, 258, 264; ¶ 2: § 265; ¶ 3: §§ 323, 324. — SEC. 3,  
 ¶ 1: §§ 257, 333; ¶ 2: § 328. — Art. IV, SEC. 1: § 80. — SEC. 2, ¶ 1: § 307;  
 ¶ 2: § 81; ¶ 3: § 82. — SEC. 3, ¶ 1: § 282; ¶ 2: § 283. — SEC. 4: §§ 70, 71, 454.  
 — Art. V: §§ 456, 457, 458. — Art. VI, ¶ 1: § 369; ¶ 2: § 277; ¶ 3: §§ 112, 337.  
 — Art. VII: § 67. — Added after Art. VII: § 65. — Amendment I: §§ 298,  
 299, 300, 336. — Amendment II: § 302. — Amendment III: § 303. — Amend-  
 ment IV: § 304. — Amendment V: §§ 322, 325, 326. — Amendment VI:  
 §§ 323, 324, 325. — Amendment VII: § 324. — Amendment VIII: § 328. —  
 Amendment IX: § 296. — Amendment X: § 276. — Amendment XI: § 258.  
 — Amendment XII: §§ 212, 213, 214. — Amendment XIII: § 297. —  
 Amendment XIV, SEC. 1: §§ 290, 301, 309, 326. — SEC. 2: § 128. — SEC. 3:  
 § 319. — SEC. 4: §§ 369, 370. — SEC. 5: § 290. — Amendment XV: § 319.

## APPENDIX C.

### BIBLIOGRAPHY OF FEDERAL GOVERNMENT.

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#### Explanation of the arrangement of the bibliography.

An exhaustive bibliography of federal government is impossible. The subject is as yet not systematized; and the literature runs into the general works on history, diplomacy, international law, and public law. The attempt has, however, been made to collect and to group all available articles bearing on the subject in general, and to give fuller bibliographies of the four great federations than could find place in the text. The number of titles cited was so great that only the more important works are included in the alphabetical list (§ 469).

#### § 463. Previous bibliographies of the subject.

No formal bibliography of Federal Government is known to the author. The foot-notes to the treatises on international and public law contain some references, especially the German works on *Staatsrecht*. See, chiefly on the theory, *Schulze, Lehrbuch*, § 23; *Zachariä, Staatsrecht*, § 25; *Zöpf, Staatsrecht*, I, §§ 62-65; *Schulze, Einleitung*, p. 197; *Meyer, Grundsätze*, § 2; *von Rönne, Deutsches Staatsrecht*, § 6; *Mohl, Encyclopädie*, § 49. In *C. K. Adams, Manual*, and *W. E. Foster, References to the Constitution*, 4, 5, 8, will be found a few references. The citations to the treatises on international law may be found in § 466. The *Statesman's Year Book* contains an excellent brief bibliography of each government now in existence.

#### § 464. Texts of federal constitutions.

There is no extensive collection of federal texts only; they are to be found among others in the great collections of documents, especially in the *British and Foreign State Papers*; here they are usually, but not universally, in English. In the *Staatsarchiv* they appear usually in German. Both publications are elaborately indexed. Some may be found, invariably in French, in the *Archives Diplomatiques*. The *Papers relating to Foreign Affairs*, issued annually by the United States Government, sometimes contain texts. The most convenient selection of constitutions is that of *Dareste de la Chavanne* (1883), which includes, in French, the four great constitutions and several of the Latin-American. *Föhlitz, Europäische Verfassungen*, contains texts from 1789 to 1847. *Dufaur's Collection* also contains earlier texts, to 1825. *Demombyne, Constitutions Européennes* (1881), has many useful notes, but does not include full texts. For the Latin-American States there are two collections: the *Constituciones Vigentes* (1872) and *Constitucion nacional* (1882), besides *Arosemena, Estudios Constitucionales*. References to the text of each government will be found under that country in the historical part.

#### § 465. Historical geography of federations.

Maps are to be found in the historical atlases, and, for existing governments, in the standard atlases of modern geography. Special works are enumerated under each country. The principal authorities are: *M. Lavoisne, Genealogical, Historical, Chrono-*

logical, and *Geographical Atlas*, 3 Am. ed. (1821); *Dussieux, Atlas Générale*; *Spruner, Geographisches Hand-Atlas* 2 aufl. 1854, 3. aufl. under title *Spruner-Menke, Hand-Atlas* (1880); *Droysen, Allgemeiner Historischer Hand-Atlas* (1886), the best historical atlas, very clear and beautiful maps; *Rhode, Historischer Schul-Atlas*; *Labberton, Historical Atlas*; *E. A. Freeman, Historical Geography of Europe* (2 ed. 1882), with maps; historical maps in *Epochs of Ancient History* and *Epochs of Modern History*; *Publications of the Royal Geographical Society, a Classified Index [1830-1883]* in *Harvard University Bulletin*, also printed separately; *Petermann, Geographische Mittheilungen [1855-1890]*, a *Classified Index in Harvard University Bulletin*, II, III, also printed separately; successive editions of *Brockhaus, Conversationslexikon*; *Meyer, Conversationslexikon*; *Appleton's American Cyclopædia* and *Annual Cyclopædia*; *Réclus, Nouvelle Géographie universelle* (1876-1890), has not yet reached America, except Northern Canada; standard atlases in successive editions, especially *Stieler, Hand-Atlas*; *Sohr und Handtke, Universal Hand-Atlas*; *Stanford, London Atlas* (1887); *Colton*; *Mitchell, Black*.

### § 466. Theory of federal government.

The first treatise on this subject is *Pufendorf, De systematibus Civitatum* (1675). The classical authority on the conception of federal government is *Waitz, Das Wesen des Bundesstaates*, first published in 1853 in the *Allgemeiner (Kieler) Monatschrift*, 494-530, republished in his *Grundzüge der Politik*, 42-46, 153-218 (1862). *Vollgraff* in 1859 published a monograph, *Wodurch unterscheiden sich Staaten-Bund, Bundesstaat und Einheitsstaat*. Waitz's theory has of late years been strenuously attacked. Later discussions are: *Cohn, Quid intersit inter Confoederationem Civitatum et Civitatem Confoederatam* (1868); *Seydel, Der Bundesstaatsbegriff*, in *Zeitschrift für die gesammte Staatswissenschaft*, vol. 27, 185-256 (1872); *Tallichet, L'Idée de la Fédération*, in *Bibliothèque Universelle et Revue Suisse*, n. pér., vol. 49, pp. 301-335, 489-524, 686-732 (1874); *Hünel, Zur Kritik der Begriffbestimmung des Bundesstaates*, in *Annalen des deutschen Reiches*, 1877, pp. 78-92; *Bake, Beschouwingen over den Statenbond en den Bundesstaat* (1881). *Von Brie*, in his *Bundesstaat* (1874), has examined carefully the historical growth of the conception of a federal state. The most important work on the subject is *Jellinek, Die Lehre von den Staatenverbindungen* (1882); the work is elaborate and perspicuous, and is illustrated by historical examples.

Of value chiefly for the history of the theory are: *Welcker, Ueber Bundesverfassung und Bundesreform* (1834); *v. Gagern, Denkschrift über den Bundesstaat*, in the *Leben* by his brother Heinrich, I, 372-387 (1856); *Prudhon, Du Principe fédératif* (1863); and a dull book by *Frantz, Der Föderalismus als das leitende Princip* (1879).

Next to Waitz, the best-known interpreter of the theory is *Bluntschli*. His views are set forth in the *Staatswörterbuch*, article on *Bundesstaat, Staatenbund*; in the *Lehre vom modernen Staat*, III, 392-419; in the English translation, *Theory of the State*, Book IV, chs. iii, iv, Book VI, chs. v, xxiv (pp. 251-261, 322-324, 455-459); in *Gesammelte kleine Schriften*, II, 279; in *Völkerrecht*, §§ 70, 160.

In most of the text-books on international law there is a brief discussion of the subject. It is included in the references to *Phillimore*, *Twiss*, *Calvo*, and *Wheaton* in § 465. There are interesting discussions also in: *Bowyer, Commentaries on Universal Public Law*, ch. xxvii; *Calvo, Dictionnaire de Droit International*; *Creasy, First Platform*, ch. vii. The *Federalist* contains many passages on the nature of federal government.

French publicists have been little drawn to the theoretical question; and writers on the United States and Canadian governments have turned rather toward the practical exposition of their institutions as they found them. Writers on Swiss and German con-

stitutional law often briefly discuss the theory of federal government. There may be cited: *Dubs, Das öffentliche Recht*, II, erster Abschnitt; *Laband, Staatsrecht*, I, § 8 (15 pp.); *Meyer, Lehrbuch*, §§ 12-14; *Schulze, Lehrbuch*, § 25; *Zöpfl, Grundsätze*, §§ 62-64.

#### § 467. Discussions of federal government.

Although the philosophical basis of federal government has been the subject of learned research and controversy, the author has found no treatise on the comparative advantages of this and of other forms of government. The nearest approaches are the Introduction to *Freeman's Federal Government* and *Treitschke's* monograph, *Bundesstaat und Einheitsstaat* in his *Historische und politische Aufsätze*, II, 77-241 (1871). Freeman makes use of the comparative method throughout; Treitschke is more philosophical. *B. A. Hill, Liberty and Law* (1880), is a diffuse and doctrinal argument for centralization.

Brief but very valuable discussions are to be found in selected passages from *Mill, Representative Government* (1862), ch. xvii; in *Cornewall Lewis, Dialogue on the Best Form of Government*, 107-113 (1863), and in *Jeremy Bentham, The Constitutional Code*, ch. 31, in vol. IX of his *Works*. Bentham summarizes the objections to federation. There is a review of Lewis's Dialogue in the *Edinburgh Review*, vol. 118, pp. 138-152 (July, 1863). The two most instructive recent discussions in books are in *Dicey, Law of the Constitution*, Lecture IV (1885), and in *Crane and Moses, Politics*, chs. x, xvii (1884). There is also a brief discussion in *Hannis Taylor, Origin and Growth of the English Constitution*, I, 48-59.

Much valuable material may, however, be found in periodicals. There was an article on the *Federative Policy of Europe* in the *Quarterly Review*, vol. 38, pp. 172-192 (July, 1828). Several articles were called out by the publication of *Freeman's Federal Government* in 1863: there are elaborate reviews in the *National Review*, vol. 17, pp. 339-366 (Oct., 1863); by *T. Chase* in the *North American Review*, vol. 101, pp. 612-619 (Oct., 1865); and an article by *J. H. Allen* on *Federalism and its Present Tasks*, in the *Christian Examiner*, vol. 76, pp. 250-270 (Mar., 1864). To this group may also be added *Mr. Freeman's* own essay on *Presidential Government*, first published in the *National Review*, Nov., 1864, and republished in his *Historical Essays*, pp. 373-406 (1871); it is particularly valuable for its comparison between the United States and Switzerland. A little earlier came *Cherbuliez's* article, *De la Division du Pouvoir dans les États fédératifs*, in the *Bibliothèque Universelle et Revue Suisse*, vol. 3, p. 520 (1858).

The most valuable contributions to the subject in periodicals are: the two articles of *John F. Baker* in the *Albany Law Journal*, — *Character of Federal Government*, vol. 20, pp. 85, 86 (Aug. 2, 1879), and *Causes which may endanger Federal Government*, vol. 20, p. 246; the two articles of *A. V. Dicey, Authority of the Courts of Law*, in *New Jersey Law Journal*, vol. 8, pp. 57-62 (Feb., 1885), and *Federal Government*, in the *Law Quarterly Review*, vol. 1, pp. 80-99 (Jan., 1885); *C. R. Lowell* on *English and American Federalism* in the *Fortnightly Review*, vol. 49, pp. 189-195 (Feb., 1888); an anonymous article on *Federal Government* in the *Westminster Review*, vol. 129, pp. 573-586 (May, 1888).

#### § 468. Historical accounts of federal governments.

There is a singular lack of any comprehensive historical account of federal governments. *Freeman* attempted the task in his *Federal Government*, but left it unfinished. *McGee* in his brief *Notes on Federal Government* gives a hasty and far from accurate historical sketch. The account drawn up by *Madison*, and published both in his *Works*, I, 293-315, and in *Washington's Works*, IX, 521-538, is interesting, but overestimates the strength of early federations. Still earlier are *Mayer, Liges achiennne, suisse et hollandoise et Révolution des États-Unis* (1787), and *Zinserling, Système fédératif* (1809).

Woolsey, in his *Political Science*, Part III, chs. vii, viii, sketches the earlier forms. Denison's essay on the *Power and Stability of Federative Governments* is intelligent, but antiquated (1829).

The best historical accounts are to be found in the more elaborate treatises on international law: *Calvo*, I Partie, Livre ii (I, 117-192); *Phillimore*, Part II, chs. i-v (I, 75-147); *Twiss*, chs. II, III (16-81). The various editions of *Wheaton's Elements* are particularly valuable, and are often enriched by notes of the editors: ch. II, §§ 16-49; French ed., *Commentaire sur les Éléments*, ch. ii, secs. xii-xxii (I, 223-344); Boyd's ed., 43-76; Dana's ed., 29-88; Lawrence's ed., 31-111. There is a brief discussion in *Lieber, Manual of Political Ethics*, Book VI, ch. ii (30 pp.). In *Mann, Ancient and Mediæval Republics*, are imperfect accounts of a few governments. Holland and Switzerland are well treated in *May, Democracy in Europe*.

The following articles from periodicals or collections of essays deal, often in a very helpful manner, with the history of federal government: *Cherbuliez* in *Bibliothèque Universelle et Revue Suisse*, XIX, 202-229 (Jan., 1864); *Dalton* in *Nineteenth Century*, XVI, 96-117 (July, 1884), and *Living Age*, CLXII, 259-272 (Aug. 2, 1884); *Dacey* in *Nation*, XLI, 297, 298 (Oct. 8, 1885); *Mohl* in *Zeitschrift für die gesammte Staatswissenschaft* (1870). Especially valuable is *N. W. Senior* on *European and American State Confederacies*, in *Edinburgh Review*, LXXXIII, 150-196 (Jan., 1846), reprinted in *Eclectic*, XXVII, 400-426, and *Living Age*, VIII, 585-602 (Mar. 28, 1846), also reprinted in *Senior, Historical and Philosophical Essays*, I, ch. iv.

Many of the discussions of federal government (§ 467) contain historical matter.

#### § 469. The United States as a federation.

BIBLIOGRAPHIES of the Constitution. *Winsor, Narrative and Critical History*, VII (1888), 255-266; *Foster, References to the Constitution* (1890), *References to the History of Presidential Administrations* (1885), and in *Library Journal*, V, 172-175, 222, 223 (June, July, 1880); *Barnwell, Reading Notes on the Constitution* (1887), reprinted from *Bulletin of the Library Company*; *Hart, Topical Outline of Courses in the Constitutional and Political History of the United States*, last ed. 1889; *Hart, Pamphlet for the Use of Students* (1890), especially §§ 9, 10, 17, 27, 36, 44; *Mead, Constitution, Bibliographical and Historical Notes* (1887), 21-41; *Howard, Introduction to the Local History of the United States: its History and Constitution* (1889), 273-276, reprinted from *Encyclopædia Britannica*, 9 ed., XXIII, 787; *Von Holst, Staatsrecht*, 3, 21, 22, *Mason's* translation, *Constitutional Law*, 36, 37; *Dareste, Constitutions* (1883), II, 411, 412; *Calvo, Droit International*, § 59; *Political Science Quarterly*, III, 485-488 (Sept. 1888). — Articles in periodicals may be found through *Jones, Index to Legal Periodicals* (1888); *Poole, Index to Periodicals* (1882) and *Supplements* (1885-1889); and the special indices to *Harper's*, *Atlantic*, *North American Review*, and other periodicals.

TEXTS. Lists of texts in *Winsor*, VII, 256; *Foster, References to the Constitution*, 19; *Dareste*, II, 410; *Barnwell*, p. 5. Official publications: *Revised Statutes of the United States* (1878), 5-32; *Poore, Charters and Constitutions* I, 1-24 (1877); *Elliot, Debates*, (1836 and later eds.), I, 1-21; *Hickey, Constitution*, approved by Congress

(1846); many subsequent editions, especially *Cummings* (1878); *Manual of the House of Representatives*, biennial; *Manual of the Senate*, biennial. Most of the above include the Declaration of Independence, the Articles of Confederation, the Constitution of 1787, and the Amendments, and also an analytic index to the Constitution. Unofficial texts in many hundreds of editions and in many languages. *Prison, Documents Illustrative of American History* (1886); *Hough, American Constitutions* (1871, 1872). Most of the treatises contain the texts (see below); see also the separate texts, *post* §§ 34-40.

**HISTORICAL GEOGRAPHY.** Little attention has been given to the geographical development of the Union. *Winsor*, I-VII, especially VII, 527-562; bibliographies at the heads of the chapters in *Townsend's Colonies* (1890); *MacCoun, Historical Geography of the United States* (1889); *B. A. Hinsdale, Bounding the United States*, in *Magazine of Western History*, II, 401-423 (Sept. 1885), and *The Old Northwest* (1888); *Hewes and Gannett, Scribner's Statistical Atlas of the United States* (1885), pp. 31-40, plates 12-17; *Hewes, Citizen's Atlas of American Politics* (1888), plates 10-15; *Dreyer, Historischer Handatlas* (1886), plate 84; *Donahisen, Public Domain*, 4 ed. (1884), also printed as 47 Cong., 2 sess., House Misc. Doc., Pt. IV, Document 45; *Gannett, Boundaries of the United States*, also in *United States Geological Survey Bulletin*, II, 13; *Freeman, Historical Geography*, I, ch. xiii, § 5; *Morse, American Geography and Gazetteers* on the period 1789-1810; many maps in histories, see below.

**AMERICAN TREATISES.** The commentaries on the Constitution are very numerous, but the federal character of the government is usually discussed in them with little reference to the experience of other countries. Lists of commentaries may be found in the bibliographies cited above, especially: *Von Holst, Constitutional Law*, 36, 37; *Mead*, 37, 38; *Foster*, 21-29; *Winsor*, VII, 256, 261, 263; *Darwin*, II, 411; *Laker*, I, 611, III, 1019; *Sauls*, 308; *Clarke, Digest*, 21-23; *Lippell's American Catalogue*, II, 421, III, 204; Subject Catalogues of the Library of Congress, the Boston Athenæum, and the German Reichstag, and other libraries, under the title *Constitution, United States, Vereinigte Staaten*.

The following are the principal formal treatises of the Constitution as a whole, published before 1833: *Federalist* (1787-88, many subsequent editions, *Darwin's* (1864) is the best); *James Sullivan, Observations upon the Government of the United States* (1791); *Tucker, Blackstone's Commentaries* (1803), with many notes on the Constitution; *James Wilson, Works* (1804), especially Part I, c. xi, Part II, c. i-iii; *J. E. Hall, Tracts on Constitutional Law* (1813); *John Taylor, Construction construed and Constitution vindicated* (1820); *T. Sergeant, Constitutional Law* (1822, 2 ed. 1830); *John Taylor, New Views of the Constitution* (1823); *N. Dane, General Abridgment and Digest of American Law* (1823-29), especially ch. 187, 196, 225; *W. Rawls, View of the Constitution* (1828, 2 ed. 1829); *James Kent, Commentaries on American Law* (1826-30, many subsequent editions, especially Vol. I, Part ii); *J. Story, Commentaries on the Constitution of the United States* 1833, 3 subsequent editions, the best is *Cooley's*, 1873; *J. Story, Commentaries on the Constitution, abridged by the Author* (1833); *J. Bayard, Exposition of the Constitution* 1833; *W. A. Duer, Outlines of the Constitutional Jurisprudence of the United States* 1833; *P. S. Dugonceau, Brief View of the Constitution* (1834); *J. Story, Constitutional Class Book* (1834). To this period also belong the discussions of Calhoun, Webster, and Madison on the nature of the Constitution: see *Foster's References to Presidential Administrations*, especially pp. 23, 24.

From 1833 to 1861 appeared: *H. Baldwin, General View of the Origin and Nature of the Constitution* (1837); *J. Marshall, Writings upon the Federal Constitution* (1839), opinions extracted from the *Reports of the Supreme Court*; *D. Raymond, Elements of Constitutional Law* (1840); *A. P. Upshur, Brief Enquiry into the Nature of the Federal*

*Government* (1840); *W. A. Duer, Course of Lectures on the Constitutional Jurisprudence of the United States* (1843, 2 ed. 1856); *H. St. G. Tucker, Lectures on Constitutional Law* (1843); *E. F. Smith, Constitutional and Statutory Construction* (1848); *C. B. Goodrich, Science of Government as exhibited in the United States* (1853); *T. Sedgwick, Treatise on the Rules which govern the Interpretation and Application of Constitutional and Statutory Law* (1857, *Pomeroy's* ed. 1874).

Since 1861 have appeared: *J. Parker, Constitutional Law* (1862); *J. Tiffany, Treatise on Government and Constitutional Law* (1867); *J. Monroe, The People the Sovereigns* (1867), posthumous; *J. N. Pomeroy, Introduction to the Constitutional Law of the United States* (1868, many subsequent eds.); *T. M. Cooley, Treatise on Constitutional Limitations* (1868, 3 other eds. to 1878); *P. C. Centz*, pseudonym for *B. J. Sage, Republic of Republics* (1871, and later eds.); *J. King, Commentary on the Law and True Construction of the Constitution* (1871); *J. W. Andrews, Manual of the United States Constitution for American Youth* (1873); *T. M. Cooley, Story's Commentaries*, additional chapters xlii-xlviii (1873); *H. Flanders, Exposition of the United States Constitution* (1873); *G. W. Paschal, Constitution of the United States defined and annotated* (1876); *W. O. Bateman, Political and Constitutional Law of the United States* (1876); *O. F. Bump, Notes of Constitutional Decisions* (1878); *T. W. Powell, Analysis of American Law* (1878), especially Book i; *R. Desty, Constitution of the United States, with Notes* (1879, 2 ed. 1887); *T. M. Cooley, General Principles of the Constitutional Law of the United States* (1880); *S. F. Miller, Constitution of the United States* (1880); *J. C. Hurd, Theory of our National Existence* (1881); *F. Wharton, Commentaries on Law* (1884); *J. I. C. Hare, American Constitutional Law* (1889).

The most important of the above treatises are: *Kent, Commentaries*; *Story, Commentaries*; *Marshall, Writings*; *Tiffany, Government and Constitution*; *Pomeroy, Constitutional Law*; *Cooley, Constitutional Law*; *Wharton, Commentaries*; *Hare, Constitutional Law*; to which should be added from the succeeding list, *Toqueville, Von Holst*, and *Bryce*.

**FOREIGN TREATISES.** The political and constitutional system of the United States has attracted the attention of several discriminating foreign writers, most of whom compare the government with that of other countries: *R. von Mohl, Das Bundesstaatsrecht der Vereinigten Staaten*, Vol. I (1824), *Verfassungsrecht* is all that was ever published; *Toqueville, Democratie aux États-Unis* (1835, English translation by *Reeve*, 1838, edited by *Bowen*, 1862, and other editions) was the first foreign criticism which attracted much attention, and it is still a valuable commentary; *Reimann, Vereinigte Staaten im Uebergange vom Staatenbund zum Bundesstaat* (1855), and *Rüttimann, Nordamerikanisches Bundesrecht verglichen mit den politischen Einrichtungen der Schweiz* (1867-76), are comparisons of American and Swiss public law; *Schlieff, Verfassung der amerikanischen Union* (1880); *Von Holst, Staatsrecht der Vereinigten Staaten von Amerika* (1885) in *Marquardsen, Handbuch des öffentlichen Rechts*, Hbd. I, Abth. iii; English translation by *Mason*, under the title of *Constitutional Law* (1885), is the best commentary on the federal character of the government; *J. Bryce, American Commonwealth* (1888, 2 ed. 1890) is the most valuable foreign commentary, going as it does not only into legal, but also into political relations; Part I deals with the United States as a confederation. The most recent book is *Carlier, La République Américaine*. 4 Tom. (1890.)

**DISCUSSIONS.** Distinguished from the treatises by being rather critical than descriptive are the works of which lists may be found in *Foster*, 21, 32, *Winsor*, VII, 264-266; *Barnwell*, pp. vii-x. Among these foreign discussions are: *P. F. Aiken, Comparative View of the Constitutions of Great Britain and the United States* (1842); *Tremenhere, Constitution of the United States compared with our Own [English]* (1854). Several

discussions grew out of the Civil War: *Eyma, La République Américaine* (1861); *Spence, American Union* (1862); *Loehnis, Vereinigte Staaten* (1864); *Lastarria, La América* (1867); *Jennings, Eighty Years of Republican Government* (1868); *J. C. Bluntschli, Gründung der nordamerikanischen Union* (1868); *E. Boutmy, Études de Droit Constitutionnel* (1885), 83-216, and *Constitutions Étrangères*, I ( ); also *Von Holst, Constitutional Law* (1885), and *Bryce, American Commonwealth* (1888).

Important American discussions are: *John Q. Adams, Jubilee of the Constitution* (1839); *F. Lieber, What is our Constitution?* (1861), reprinted in his *Miscellaneous Writings* (1881) II, 87-123; *S. G. Fisher, Trial of the Constitution* (1862); *J. W. Draper, Thoughts on the Civil Policy of the United States* (1865); *O. Brownson, American Republic* (1866); *E. Mulford, The Nation: the Foundations of Civil Order and Political Life in the United States* (1870); *A. Stickney, True Republic* (1879) and *Democratic Government* (1885); *J. K. Hosmer, Short History of Anglo-Saxon Freedom*, (1890); *C. G. Tiedeman, The Unwritten Constitution of the United States* (1890).

*W. C. Ford, American Citizen's Manual*, 2 parts (1883); *Woodrow Wilson, Congressional Government* (1884); *H. Davis, American Constitutions*, in *Johns Hopkins University Studies*, III, nos. ix, x (1885); especially commendable is *J. F. Baker, The Federal Constitution, an Essay* (1887), 94 pp. There are also elaborate discussions in the works of *Madison, Calhoun, Webster, Jefferson Davis*, and *A. H. Stephens*: see ante § 40.

BRIEF DISCUSSIONS. *H. S. Maine, Popular Government*, 196-254; *A. V. Dicey, Law of the Constitution*, 131-152; *J. Fiske, American Political Ideas*, 57-100; *Crane and Moses, Politics*, 223-252; *S. Sterne, Constitutional and Political Development*, 4 ed. (1888) c. i-4; *W. Wilson, The State*, §§ 832-1120, reprinted separately as a text-book, one of the best brief accounts; *T. M. Cooley, Constitutional Limitations* (1871), c. ii; *E. A. Freeman, Federal Government*, Introduction; *James Bryce, Predictions of Hamilton and Tocqueville*, in *Johns Hopkins University Studies*, V, 325-382 (1887); *Gladstone, Kin beyond Sea*, in *North American*, vol. 127, pp. 179-212 (Sept. 1878), also reprinted in his *Gleanings of Past Years*, I, 203-248; *Freeman, Presidential Government*, in *National Review*, vol. 19, pp. 1-26 (Nov. 1864), also reprinted in his *Historical Essays*, 1 series, 373-406; *A. Johnston, First Century of the Constitution*, in *New Princeton Review*, vol. 4, pp. 175-190 (Sept. 1887); *J. B. McMaster, First Century of Constitutional Interpretation*, in *Century*, vol. 37, pp. 866-878 (Apr. 1889); *E. J. Phelps, Constitution of the United States*, in *Nineteenth Century*, vol. 23, pp. 297-316 (Mar. 1888); *Wheaton*, Pt. I, c. 11, § 24; *Lawrence's Wheaton*, Notes 39-43; *Phillimore*, §§ 118-120; *Calvo, Droit International*, § 59; *Wharton, Commentaries*, § 363; *Twiss*, §§ 43, 44; *Woolsey, Political Science*, II, 236-257.

HISTORICAL ACCOUNTS. Most of the histories of the United States discuss military events and political development, rather than the growth of institutions. Lists may be found in the bibliographies cited above, especially in *Winsor*, VII, 264, VIII, 469-507; *C. K. Adams, Manual*, ch. xiv; *Foster, References to the Constitution*, 21-29, *References to Presidential Administrations*, 1-58; *Dareste*, II, 410-412; also in *Leyboldt, American Catalogue*, and in library catalogues under "United States."

Of the constitutional histories the most important is *Von Holst, Verfassung und Demokratie der Vereinigten Staaten*, title of later volumes, *Verfassungsgeschichte der Vereinigten Staaten* (1873-88), translated by *Lalor* and *Mason* under the title *Constitutional and Political History of the United States* (1876-80). Vol. I is practically an essay on the development of the government to 1829; vols. II-VI cover the period 1829-59 systematically, and must long remain the acknowledged authority on the constitutional phases of the slavery struggle. Another volume is expected to bring the history down to 1861. *G. T. Curtis* has republished his *History of the Constitution*



[1775-1789] (1854) as a first volume of a *Constitutional History of the United States* (1889); his second volume will be the best comprehensive account of the growth of the Constitution since 1789. *J. S. Landon, Constitutional History and Government of the United States* (1889), is a useful volume in convenient compass. The late *Alexander Johnston* has left, besides numerous constitutional articles of great value in *Lalor's Cyclopædia*, the two best short constitutional histories: *History of American Politics* (1880, revised by *Sloane*, 1889), and *The United States: its History and Constitution* (1889), reprinted from the *Encyclopædia Britannica*, 9 ed., Art. United States. Briefer histories are: *Sterne, Constitutional and Political Development*, 4 ed. (1888); *L. H. Porter, Outlines of the Constitutional History of the United States* (1883).

There are historical sketches in most of the treatises, especially *Story, Commentaries* (1833), §§ 1-305, ably supplemented by *Cooley's* additional chapters in his edition of *Story*, c. xlv-lviii. *G. T. Curtis, Constitution of the United States and its History*, in *Winsor*, VII, 237-255, deals chiefly with the formation of the Constitution.

Several of the narrative histories discuss constitutional questions freely, especially *R. Hildreth, History of the United States [1788-1821]* (1856), vols. III-VI of his complete work; *G. Tucker, History of the United States [1775-1841]* (1856-57); *H. Wilson, Rise and Fall of the Slave Power in America [1619-1869]* (1872-77); *James Schouler, History of the United States under the Constitution (1880-89)*, still in progress, 4 volumes published, reaching to 1847; *J. B. McMaster, History of the People of the United States*, still in progress, 2 volumes published (1883-85), reaching to 1803; *Henry Adams, History of the United States during the Administrations of Jefferson and Madison [1801-1817]*, 6 volumes published (1889-90), reaching to 1813; *J. G. Blaine, Twenty Years of Congress (1884-86)*. There are many other histories less valuable for the constitutional student.

BRIEF ACCOUNTS are very numerous. The best of them are enumerated under the head of "brief discussions" above.

ARTICLES IN PERIODICALS. The best are cited above under the head of "brief discussions." Most articles compare popular elements of the American system with restricted forms of government, or compare the congressional with a parliamentary system. There has been less discussion of the United States as a federation.

THE BEST REFERENCES. *Von Holst, Constitutional Law*, especially §§ 7-19; *Bryce, American Commonwealth*, especially xviii; *Dicey, Law of the Constitution*, especially 126-128, 135-152; *Tocqueville, Democracy in America*, especially Book I, c. xviii; *Maine, Popular Government*, c. iv; *Crane and Moses, Politics*, c. xviii; *Boutmey, Études*, 83-216; *Cooley's Story*, c. xlv-lviii; *Baker, The Federal Constitution* (1887), ch. v-viii; the essays of *H. Davis, Johnston, McMaster*, and *Phelps*.

#### § 470. Switzerland as a federation.

BIBLIOGRAPHIES of constitutional law and history. *Dubs*, 62-63; *Oechsli, Quellenbuch*, 562-566; *Daresté*, I, 469; *Lalor*, III, 850; *Dresdener Bibliothek, Verzeichniss* (1880); *Revue Historique*, vol. 24, pp. 143-164 (1884); *Wilson, State*, 333; *Foster, References*, 8, 33; *Statesman's Year Book*; *Hart in Old South Leaflets, General series*, No. 18, pp. 36-38.

TEXTS. *Oechsli, Quellenbuch* (1886); *Bluntschli, Urkundenbuch und Geschichte des Bundesrechts*, II; *Moreno, Principales Constituciones de Suiza* (1881-82). See also list of general collections, ante § 464, and of the separate texts in §§ 42-46.

HISTORICAL GEOGRAPHY. *Himly, Formation Territoriale de l'Europe*, II, 353-437; *Freeman, Historical Geography*, I, 268-276, II, Maps xxv-xxxi; *Droysen, Atlas*, Plate 25; *Rhode, Schul-Atlas*, Plate xx.

SWISS TREATISES. The principal Swiss commentaries are descriptions of the govern-

ment under the present Constitution, but they usually contain historical introductions. *Snell, Handbuch des schweizerischen Staatsrechts* (1839-1845); and *Bluntschli, Bundesstaatsrecht* (1848), and *Geschichte des schweizerischen Bundesrechts* (1849-52), are valuable especially on the conditions before 1848. *Kaiser, Staatsrecht* (1851-1860); *Heimann, Bundesverfassung* (1860); *Ullmer, Droit Public* (1864-67); and *Rüttlimann, Nordamerikanisches Bundesstaatsrecht verglichen mit den politischen Einrichtungen der Schweiz* (1867); these are particularly useful on the Constitution of 1848. *Blumer, Handbuch des schweizerischen Bundesrechtes* (1863-64) has since the revision of 1874 been thoroughly rewritten by *Morel* (1877-1881). *Bluntschli* has also revised his *Geschichte des schweizerischen Bundesrechtes* in an edition of 1875. *Meyer* has issued four important works since 1875: *Geschichte des schweizerischen Bundesrechtes* (1875-78), with a supplementary *Uebersicht* (1881); *Eidgenössische Bundesverfassung* (1878) and *Staatskalender* (1880). Less important works are: *Zorn, Staat und Kirche* (1877); *Cohn, Bundesgesetzgebung* (1879); *Curti, Geschichte der Volksgesetzgebung* (1882). The little *Instruction Civique* by *Numa Droz* is a very clear and intelligent work. The most valuable treatises are: *Dubs*, German edition, *Das öffentliche Recht der schweizerischen Eidgenossenschaft* (1878), French edition, *Le Droit public de la Confédération Suisse* (1878); *Orelli, Staatsrecht der schweizerischen Eidgenossenschaft* (1885). Both these writers, but especially *Dubs*, have much to say about the principles of confederation, and frequently compare Switzerland with other countries. *C. Hilty*, in his *Politisches Jahrbuch der Schweizerischen Eidgenossenschaft* (1886-1890), discusses current politics and public law.

OTHER TREATISES. There are notes on some phases of Swiss public law in *Demombyne, Constitutions Européennes* (1881). Very important are four recent works in English: *Adams and Cunningham, Swiss Confederation* (1889); there is a French translation by *H. G. Loumeyer*, under the title *La Confédération Suisse* (1889), with notes which add much to its value; *Moses, Federal Government of Switzerland* (1889); *J. M. Vincent, State and Federal Government in Switzerland* (to appear 1891); and *Boyd Winchester, The Swiss Republic* (in preparation). All describe the Swiss constitution; *Adams and Cunningham* are especially good on local government and the Referendum; *Moses*, on the federal character of the government; *Vincent* will treat local, state and federal government in a more strictly constitutional manner; *Winchester* will devote much attention to the internal workings of the government.

HISTORICAL ACCOUNTS. Out of the numerous histories of Switzerland the following may be mentioned: *Mallet, Histoires des Suisses* (1803); *Meyer von Knonau, Handbuch* (1826-29); *Blumer, Staats- und Rechtsgeschichte der Schweiz* (1848-59); *Bluntschli, Staats- und Rechtsgeschichte* (1849); *Zschokke, Schweizerlands Geschichte*, 9 ed. (1853); *Morin, Précis* (1856-75); *Strickler, Lehrbuch*, (1874); *Planta, Die Schweiz in ihrer Entwicklung zum Einheitsstaat* (1877); *Vuillemin, Histoire* (1875-76); *Dändliker, Geschichte* (1884-87); *Dierauer, Geschichte* (1887).

ACCOUNTS IN ENGLISH. *Planta, History* (1807); *Naylor, History* (1809); *Wilson, History* (1832); *Vieusseux, History* (1846); *Zschokke, History*, translation by *Shaw* (1860); *Mackenzie, Switzerland* (1881). Briefer and better from the point of view of federal government are the historical introductions in *Moses, Adams and Cunningham, Winchester, Dubs*, and *Orelli*.

BRIEF ACCOUNTS. *E. A. Freeman* on *The Federal Constitution of Switzerland* in *Fortnightly Review*, vol. 2, pp. 533-548 (Oct. 15, 1865); *Freeman*, on *Presidential Government* in *National Review* (Nov., 1864), reprinted in his *Historical Essays*; *May, Democracy in Europe*, I, 333-403; *Andrew Fiske, The Federal Constitution of Switzerland* (1886), unpublished, MS. in Harvard College Library; *Bluntschli* in *Gesammelte*

*Kleine Schriften*, II, 114-131; Woolsey, *Political Science*, II, 208-223; Phillimore, §§ 113-117, 134 n.; J. M. Vincent, *A Study of Swiss History*, in *Papers of the American Historical Association*, vol. 3, pp. 146-164 (1887); Bluntschli, *Staatwörterbuch*; Woodrow Wilson, *The State*, §§ 505-577; *Encyclopædia Britannica*, 9th ed.; *Statesman's Year Book*; Dareste, I, 439-440; Wheaton, Part I, c. ii, § 25.

BEST BRIEF REFERENCES. Selections from Dubs, Orelli, Moses, Adams and Cunningham, and Winchester; Vincent's and Freeman's essays.

#### § 471. Germany as a federation.

BIBLIOGRAPHIES. In most of the treatises, especially Schulze, *Lehrbuch*, § 5; Dareste, I, 159, 160; Lalor, II, 367; *Statesman's Year Book*; Levermore and Dewey, *Political History since 1815* (1889), pp. 72-81.

TEXTS. Holtzendorff und Bezold, *Materialien* (1873); Hertsllet, *Map of Europe by Treaty*; *Staatsarchiv*; *British and Foreign State Papers*; treatises below.

HISTORICAL GEOGRAPHY. Berghaus, *Deutschland seit hundert Jahren* (1859-62); Brecher, *Historische Wandkarte von Preussen* (1878); Neumann, *Geographisches Lexikon* (1883); Droysen, *Atlas*, Plates 22, 26, 31, 34, 38, 42, 46, 49, 50; Himly, *Formation territoriale*, ; Rhode, *Historischer Schul-Atlas*, Plates xi, xvii; Hertsllet, *Map of Europe by Treaty*; Freeman, *Historical Geography*, I, ch. viii, § 2, II, Maps xxii-xxiii.

GERMAN TREATISES. Several of the older treatises are enumerated ante § 30. Of the later works three classes may be distinguished. — 1. Published between 1830 and 1867: Pfizer, *Entwicklung des öffentlichen Rechts* (1835); Zöpfl, *Grundsätze des allgemeinen Staatsrechts* (1841); Christ, *Ueber deutsche national gesetzgebung* (1842); Zachariä, *Deutsches Staats- und Bundesrecht*, 3 Aufl. (1845); Zachariä, *Deutsche Verfassungsgesetze* (1855); O. Mejer, *Einleitung in das deutsche Staatsrecht* (1861); Kallenborn, *Einleitung in das Constitutionelle Verfassungsrecht* (1863); Zöpfl, *Grundsätze*, 2 Aufl. (1863). — 2. Published between 1867 and 1871: Schulze, *Einleitung in das deutsche Staatsrecht* (1867); Schulze, *Die Krisis des deutschen Staatsrechts* (1867); Hiersemenzel, *Verfassung* (1867); Martitz, *Betrachtungen über die Verfassungen* (1868); G. Meyer, *Grundzüge* (1868), and *Verfassungsrecht* (1868-70); Grotefrend, *Staatsrecht* (1869); Thudichum, *Verfassungsrecht* (1870). — 3. Published between 1871 and 1888: Auerbach, *Reich und Verfassung* (1871); Hauser, *Verfassung* (1871); Held, *Verfassung* (1872); von Rönne, *Verfassungsrecht* (1882); Meyer, *Staatsrechtliche Erörterungen* (1872); von Mohl, *Reichstaatsrecht* (1873); Westerkamp, *Reichs-Verfassung* (1873); Hänel, *Studien zum deutschen Staatsrechte* (1873-80); Gierke, *Altes und neues Reich* (1874); Bender, *Verfassungsrecht* (1875); von Rönne, *Staatsrecht* (1876-77); Laband, *Staatsrecht* (1876-82); Mosel, *Repertorium des deutschen Verwaltungsrecht* (1877); Hartmann, *Völkerrecht, mit Rücksicht auf die Verfassung* (1878); G. Meyer, *Staatsrecht* (1878); Kössler, *Constitutionelles Werth* (1879); von Gerber, *Staatsrecht* (1880); Zeller, *Katechismus des deutschen Reiches* (1878, 2 Aufl. 1880); Zorn, *Staatsrecht* (1880-83); Schulze, *Lehrbuch des deutschen Staatsrechts* (1881-86); Laband, *Staatsrecht*, in *Marquardsen's Handbuch* (1883); G. Meyer, *Verwaltungsrecht* (1883-85); O. Mejer, *Staatsrecht* (1884); de Grais, *Verfassung und Verwaltung* (1886); von Stengel, *Verwaltungsrecht* (1886); Laband, *Staat des deutschen Reiches* (1888). — There are many treatises on special topics, among them: Greist, *Rechtstaat und Verwaltungsgerichte* ( ); Frantz, *Nationalliberale Rechtseinheit und das Reichsgericht* (1873); Bar, *Deutsches Reichsgericht* (1875).

OTHER TREATISES. Careful treatises in other languages are almost wanting. These may be mentioned: Morhain, *L'Empire Allemand* (1886); Cohen, *Études sur l'Allemagne* ( ); Demombynes, *Constitutions*, II, 487-873 (ed. 1883). In English: Woodrow Wilson, *The State*, §§ 358-457; Bryce, *Holy Roman Empire*, (7 ed. 1877), supplementary chapter.

HISTORICAL ACCOUNTS IN GERMAN. From among the numerous histories of Germany the following are selected as bearing especially on constitutional development since 1806: *Kohlrausch, Teutsche Geschichte* (1821); *Bülow, Geschichte Deutschlands von 1806–1830* (1842); *Waller, Deutsche Rechtsgeschichte* (1857); *von Kaltenborn, Geschichte der deutschen Bundesverhältnisse von 1808–1856* (1857); *Häusser, Deutsche Geschichte [1786–1815]* (1859–60); *Klüpfel, Geschichte der deutschen Einheitsbestrebungen 1848–1871* (1872–73); *Müller, Politische Geschichte der neuesten Zeit 1816–1875*, 3 aufl. (1875); *Schulte, Deutsche Reichs- und Rechtsgeschichte*, 4 aufl. (1876); *Sickel, Deutsche Staatsverfassung bis zur Begründung des constitutionellen Staats* (1879); *Treitschke, Deutsche Geschichte im Neunzehnten Jahrhundert* (1879–85); *Stinzing, Deutsche Rechtswissenschaft* (1880–84); *Biedermann, Dreissig Jahre deutscher Geschichte [1840–1871]* (1883); *Jastrow, Geschichte des deutschen Einheitsraumes*, 3 aufl. (1885); *von Sybel, Begründung des deutschen Reichs* (1889–).

OTHER HISTORICAL ACCOUNTS. *Kohlrausch, Germany*, translated by Haas (1844); *Austin, Germany from 1760 to 1814* (1854); *Menzel, Germany*, translated by Horrocks (1869); *Deventer, Cinquante Années de l'histoire fédérale de l'Allemagne* (1870); *Ward, Experiences of a Diplomat [1840–1870]* (1872); *Nicolson, Sketch of the German Constitution and of the Events in Germany from 1815 to 1871* (1875); *Schulte, Histoire du Droit*, translated by Glason (1882); *Baring-Gould, Germany Present and Past* (1879), and *Story of Germany* (1886); *Lewis, Germany* (1879); *Fyffe, Modern Europe* (1883–89); *Dyer, Modern Europe* (1861–1864); *Grant Duff, Studies in European Politics*.

BRIEF ACCOUNTS. Historical introductions to the treatises, especially *Schulze, Einleitung und Lehrbuch*; *Laband*, I, 3–55; *Wheaton, Commentaries [to 1867]*, I, 345–402, II, 1–9; *Dareste*, I, 131–133.

#### § 472. Canada as a federation.

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In this list are included the full titles of the more important works to which reference has been made in this monograph; it includes books devoted exclusively to the subject, books in which there are parts or chapters on the subject, and special articles; books relating chiefly to particular countries will be found under those countries in the bibliographical notes.

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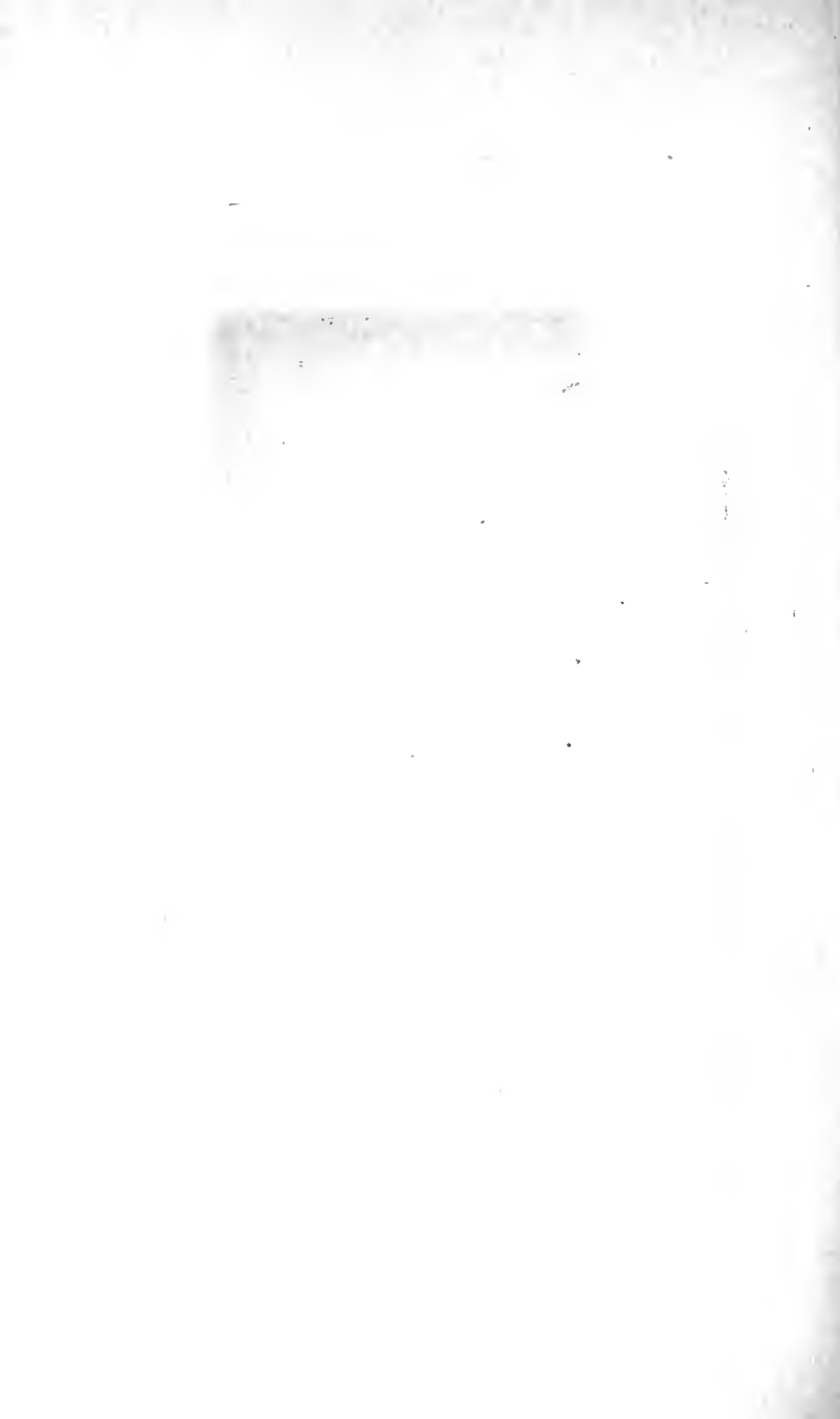
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1956  
Author Hart, Albert Bushnell  
Pol.Sci  
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H3251  
Title Federal government.[Ed.2.]

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